The Solicitors' Journal

VOL. 91 — Saturday, June 28, 1947 — No. 24

CONTENTS

CURRENT TOPICS

Mr. Laurence Vine

THE appointment of a third chairman in the London Sessions has been needed for a long time. Its courts are among the busiest in the country, and its magistrates and chairmen among the most hard-worked. One monthly session follows another with little or no intermission, but in spite of continuous work it has not always been possible to cope with arrears. It would have been difficult to make a better choice than Mr. LAURENCE VINE as chairman of a third court. For many years his name has been a household word in criminal advocacy, and his outstanding experience in road traffic cases as well as in the ordinary run of criminal defences and prosecutions should stand him in good stead on the bench. Mr. Vine was called to the Bar by Gray's Inn in 1922, having previously been on the staff of the *Manchester Guardian*. Only a few months ago he was made Recorder of Colchester. His present appointment is popular as well as sound. He is known to his brethren at the Bar simply as "Laurence," and it may be difficult for some of those who appear before him to restrain themselves from continuing to address him in this manner, instead of with the grander appellation of "my lord" to which he now becomes entitled. From the advocate to the judge the transition is always sudden. None will make it more smoothly and unobtrusively than Laurence Vine.

The Law Society's Annual Report

THE annual general meeting of the members of The Law Society is to be held on 4th July, at 2 p.m., in the Society's Hall, and every member has now received his notification, together with the bulky annual report, in itself a sign and token of the immensity of the work accomplished by the Society during the past year. The resolution to be put forward by Mr. LANG for a committee of inquiry into the question of a revision of the constitution will, no doubt, obtain considerable support, especially as the original charter dates back to 1845, and the old constitution was only supplemented by later charters. The fact, moreover, that the Bar successfully re-formed its constitution after the war so as to permit more democratic control of its activities should lend much force to the argument that The Law Society's constitution should be modernised "to provide adequate control of the policy of the Society by its members and for their participation in its activities." One of the matters in the report which will be observed with pleasure by members of both branches of the legal profession is the note on the setting up, in February, 1947, at the suggestion of the General Council of the Bar, of a Joint Standing Committee to consider matters of interest to both branches of the profession. The Committee meet at least once a month, except during the Long Vacation, and have power to act. They have power to invite members of the Bar Council or of the Council of The Law Society with special knowledge to attend their meetings for special purposes. With regard to the constitution of the Council, a special committee has been set up, and it has already been decided that there shall be an equal number of provincial members and London members of the Council; that, subject to an amendment to Bye-law 39, there shall be thirty of each; and that election shall be on a constituency basis.

Stamp Duty on Articles

IN a quiet and unsensational manner there was announced last week a legal revolution which will have repercussions beyond those at present foreseen. When Mr. SILVERMAN, the solicitor member of Parliament for Nelson and Colne, moved, on 16th June, a new clause in the Finance Bill to repeal the stamp duty of £80 on articles of clerkship under the Solicitors Acts, Mr. DALTON answered that he thought it was in line with present educational conceptions that the duty should be changed. If the new clause were withdrawn, the Chancellor said that he would be happy to put down a new one on the Report stage repealing the charge and substituting a charge of 2s. 6d. as in other like imposts. If other amendments were to be put down dealing with similar imposts he said that he would look at them sympathetically. He said that the annual cost of the repeal would be £100,000. Another comparable matter which it may be considered opportune to revise is the stamp duty on practising certificates which, according to the annual report for 1946–47 of the Council of The Law Society, is being considered by the Council. Representations have already been made to the Chancellor that this stamp duty should be reduced to a nominal sum, but so far without success. The £25 stamp duty required on admission would also seem to require reconsideration. At a time when overhead expenses have trebled without anything more than a trifling rise in the level of solicitors' remuneration, the present tax on their activities is an unconscionable additional burden.

Training of Magistrates

MANY excellent and instructive manuals have recently been published with a view to the education of magistrates for their ancient and responsible office. Some magistrates study them, but the impression of the busy advocate in the magistrates' courts is that the great majority still prefer the

sharp division of function between their clerk and themselves, and to rely completely on the former in matters of law. LORD CALVERLEY, a member of the Royal Commission on Justices of the Peace, asked the witnesses, Mr. N. MACKILLIGAN, chairman of the Petersfield County Bench, and The Hon. Mrs. BICKFORD SMITH, a member of that Bench, at the Commission's sitting on 21st March: "Would you say that new magistrates should have a sort of probationary training? I seem to remember that when you were appointed a magistrate you had a delightful present given to you as a sort of holiday task, 'Stone's Justices' Manual'." Mr. MacKilligan answered: "My own Bench say: 'We will not give you Stone's,' but our clerk has got out some simple rules, how much we can fine and so forth, and do you not think that far preferable to throwing a tome like 'Stone's Justices' Manual' at them? . . . There are a number of very good and helpful books, I think, if beginners were prepared to take the trouble to read them. I would certainly like to see it accepted and understood that new magistrates should have some training to learn their job." The witness agreed that it would be good training for every new magistrate to sit in silence with more experienced magistrates. It may well be that when the matter eventually comes to be discussed in the Legislature, there will be a demand that training of some sort should be compulsory, and that it will have to consist of a probationary period of sitting in silence not only in the magistrates' courts, but in quarter sessions and assizes as well, and visiting penal institutions.

Reform of Legal Education

CONDITIONS have much changed since The Law Society's examinations were first devised, and even since they were last revised. More and more administrative law, more and more administrative tribunals and more and more law relating to the regulation of our economics, as far as the last detail of a building contract, have brought about the need for a new lawyer who thoroughly understands not only the new regulations but the system that they regulate. More than ever to-day the subjects of constitutional law and economics are becoming basic needs in a lawyer's training. Those framing new syllabuses for law examinations should take notice of the points made by Professor L. J. SAUNDERS, M.A., D.Litt., Professor of Constitutional Law and History in the University of Edinburgh, in an inaugural address published in the April issue of the *Juridical Review*. Students, he said, are engaged in a study of our common inheritance. "The great phrases—Parliamentary Sovereignty, the Rule of Law, the rôle of convention, ministerial responsibility, judicial independence and so on, must be made to come alive . . . The 'rights of the subject' have to be studied in terms of specific enactment and decision, but behind the law is a complex sentiment derived from medieval pluralism, Puritan protest, aristocratic tolerance, Victorian liberalism, and that web of voluntary association which has given political training to the middle and working classes." How many subjects are here which are not taught in our schools or colleges, but can only be learned contemporaneously and together with the studies of specific enactment and decision.

Trustee Investments

A SPECIAL correspondent of *The Times* of 18th June renewed the plea that the range of trustee investments should be widened by legislative enactment, and pointed to the numerous occasions in the past—1859, 1860, 1867, 1871, 1875, 1882 and 1889—when the list of trustee securities was extended in order to meet changes in the national wealth. Recent changes justifying an extension were, he said, the repayment of loans made to the colonies, to India and to foreign borrowers, the elimination of a wide range of popular and high-yielding securities by nationalisation and the reduction in the supply of high-yielding debentures owing to the tendency of industrial companies to replace debentures by preference or ordinary shares. Moreover, only Government stocks are freely available, and the cheap money policy results in a reduced standard of living for those dependent on trust funds for their income. The practice has consequently grown of including among permitted investments the ordinary shares of proved and established companies. This practice was reflected in the Coal Act, 1938, which empowered trustees to invest money representing compensation in the ordinary stock of companies that had paid a dividend of at least 4 per cent. per annum for at least ten years. The difficulty, however, for which *The Times* correspondent rightly says that legislation is needed, is that many of the documents under which trusts arise were drawn up years ago when investment conditions were different. Trustees almost invariably consult their solicitors and other skilled advisers on investment matters, and the Chancellor's recent statement that the additional risks involved in an extension of the trustee list must be considered, is not good enough. The hardships caused by the present position are real and urgent, and we should like to hear that every side of the problem is to be considered, and as soon as possible.

Family Allowances and Income

ANOTHER of the many difficult problems arising out of "family allowances" was dealt with at the Clerkenwell County Court on 19th June, when a tenant was sued for £7 arrears of rent. For the landlords it was contended that the wife of the tenant was in receipt of 10s. a week family allowance. The tenant, however, protested that it was not right to take this into account. His Honour Judge EARENGEY, K.C., replied that the 10s. came into the family exchequer and the tenant got the benefit in that he would have to pay his wife that much less each week. The tenant, however, contended that in fact he paid his wife no less each week than he did before the family allowance was introduced. It will be appreciated that county court judges are faced with a difficult problem of law in determining whether a family allowance is part of a husband's means, or part of his wife's means, or merely a sum of money earmarked for the improvement of the living standard of his children, and part of the income of neither husband nor wife. The learned stipendiary magistrate at Hull on 11th July, 1946, held that a child's allowance was not to be taken into account in assessing what is "reasonable maintenance" for a husband to pay for his infant child within s. 4 of the Summary Jurisdiction (Married Women) Act, 1925. We then expressed the view (90 SOL. J. 338) that this was wrong (*Nott* v. *Nott* [1901] P. 241). Since then, the official view has been expressed (Ministry of Health Circular 221/46 issued on 29th November, 1946) that the purpose of the Family Allowances Act was to supplement a man's wages, which take no account of the size of his family. It would be useful to have a High Court pronouncement on the point.

Professional Standards

ALL middle-class professional people at the present time are faced, like other sections of the population, with steep increases in the cost of living, but unlike other classes solicitors are compensated by little, if any, increase in the scales of their remuneration. A correspondent to the *Daily Telegraph* of 18th June has a sympathetic word for all who belong to these classes. In estimating the prospects of success he certainly overstates the case as far as solicitors are concerned. Solicitors could not before the war "probably count on achieving a four-figure income by the time they reached the early 30's," any more than they can to-day, nor could success "fairly be expected to produce a gross income of £2,000 to £4,000 for 15 or 20 years." We cannot speak for other professions, but it was certainly not true of the legal profession as a whole. Such incomes were not the general rule, but the fact of their existence acted as a spur to those on the lower rungs of the ladder. It is, however, not entirely untrue to say that such incomes are nowadays soon levelled out by the tax collector. The correspondent believes that a result may be that the time spent in training and study for these professions will have to be reduced, and standards over a period will fall. "If skill is not given reasonable encouragement," the

correspondent writes, "skill will decline." It may be doubtful whether it is possible to arrest present tendencies, but it would certainly not be inopportune now to re-examine the whole system of financial endowment of our technical education.

Liverpool Law Clerks' Society

A KIND of enterprise which deserves encouragement wherever it is formed, is provided by the Liverpool Law Clerks' Society. In the annual report of the committee for the year ending 28th February, 1947, presented to the annual meeting on 3rd June, 1947, the forty-fourth year of its existence, is recorded the fact that the response of members to the committee's request in the last annual report to re-register was very encouraging, and the committee acknowledges the efforts of the members in inducing a large influx of new applicants, making the present membership 264. The society has been honoured with several distinguished new life members, among whom are included three High Court judges, six county court judges and the Attorney-General. At the last annual general meeting, Mr. H. M. ALDERSON SMITH, the President of the Incorporated Law Society of Liverpool, was elected president of this society for the ensuing year in succession to Mr. W. L. BATESON. The hon. treasurer's statement of accounts, duly audited, shows a balance in hand of £32 19s. 4d. in the general fund and £166 10s. 2d. in the benevolent fund. The programme of lectures arranged for the session was an unqualified success. The Common Hall was several times filled to overflowing, and in spite of critical conditions and other causes a good attendance was maintained throughout. The Society records its appreciation and indebtedness to the lecturers for their services. The lectures were without exception attractive, instructive and entertaining, arousing the interest of members, whose many questions were satisfactorily answered. The committee records with pleasure that the society has been able to obtain employment for several members during the year

International Copyright

LAWYERS will watch with interest the proceedings of the fourteenth congress of the International Confederation of Authors' and Composers' Societies which is being held in London this week. Thirty-five countries are represented and 150 delegates will attend. Since the invention of broadcasting, the problems of the protection of authors' rights have increased, and while it is not difficult to apply the existing law in order to discover what constitutes an infringement in modern times, it becomes increasingly difficult to enforce the law against pirates, both national and international. In the past, the Performing Right Society has done valiant work in the courts and elsewhere for the protection of musical composers and authors. Its chairman, Mr. LESLIE A. BOOSEY, is interim president of the congress, and in a statement to the press, on 20th June, he said that mechanical and electrical developments had been so great as to open a very wide field for discussion about their effects on composers' and authors' rights. It would, for example, be possible for anyone in the near future to make a recording in his own home of anything that was being performed on the wireless. Under the present law that would, strictly speaking, be an infringement of the right of the author or composer. Television and the relay of broadcasts from one country to another presented other problems. The work of the congress will, without doubt, have a useful bearing on any future proposals for law reform.

Recent Decision

In an appeal by the Board of Trade from a registrar in bankruptcy on 18th June (*The Times*, 19th June), the Court of Appeal (the MASTER OF THE ROLLS and MORTON and COHEN, L.JJ.) held that the registrar had jurisdiction to make an order of discharge from bankruptcy suspending the discharge for two years subject to the condition that the bankrupt should pay to the official receiver £110 a year until his creditors had received 2s. 6d. in the pound, the condition to continue, if necessary, after the period of suspension.

BREACHES OF STATUTORY DUTY UNDER THE ROAD TRAFFIC ACTS

IN no department of the law is it possible to ignore the proper principles of the construction of documents. The reputation of the Court of Chancery as the principal court of construction, chiefly of wills and deeds, has never detracted from the duty of the Common Law Courts to interpret the documents which have come before them, whether as a means of determining facts and legal relationships, or as a step in the ascertainment and application of the law, and whether the document falling to be interpreted be, for instance, a contract or an Act of Parliament. Even in the law of torts questions of construction may arise: a very well-defined line of cases reminds us that, in deciding whether or not the breach of a duty imposed by a statute gives rise to a right of action on the part of an individual who has suffered damage by the breach, the interpretation of the statute concerned is the crucial consideration.

The guiding principle is quoted in Comyn's Digest from a pronouncement of Holt, C.J.: "In every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law." There must be added a qualification, however, for, as Lord Halsbury, L.C., points out in *Pasmore* v. *Oswaldtwistle Urban Council* [1898] A.C. 387, as a general rule, "where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute." This is so notwithstanding that the remedy is by way of a fine or penalty payable not to the person injured, but to a common informer or into public funds. In the same case, Lord Macnaghten said of the general rule that whether it was to prevail or whether an exception to it was to be admitted "must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience."

There is, of course, a preliminary question of construction as to whether the statute does create an obligation at all, or whether its enabling provision is merely permissive. Examples of cases in which a statutory power was held to be permissive only, and so not to create a statutory duty, are to be found in *Smith* v. *Cawdle Fen Commissioners* [1938] 4 All E.R. 64 and *Gillett* v. *Kent Rivers Catchment Board* [1938] 4 All E.R. 810.

Again, it may sometimes be material to consider whether a statutory obligation is imposed for the benefit of a particular class of individuals or of the public generally. In *Groves* v. *Lord Wimborne* [1898] 2 Q.B. 402, we see an instance of a statutory duty (concerning certain safeguards under the Factory Acts) which was enacted for the benefit of a particular class, and a breach of which was held to be actionable at the suit of a member of that class. Some text-writers (basing themselves, no doubt, on some remarks of Atkin, L.J., as he then was, in *Phillips* v. *Britannia Hygienic Laundry Co.* [1923] 2 K.B. 832) formerly treated this type of case as being in a category separate from the main line of authorities which concern statutes held to be enacted for the benefit of the public generally; but a tendency has recently been discernible to include such cases as relevant examples of the main class—see, e.g., Maugham, L.J., in *Monk* v. *Warbey* [1935] 1 K.B. 75, at p. 85; Slesser, L.J., in *Square* v. *Model Farm Dairies* [1939] 2 K.B. 365, at p. 376. The first-named lord justice says: "The second consideration

which strongly tends to support the view that this statute [Road Traffic Act, 1930, s. 35] was not intended to preclude a civil action is that it is brought by a person pointed out on a fair construction of the Act as being one whom the Legislature desired to protect."

Slesser, L.J. (*loc. cit.*) goes on to draw a distinction between those statutes by which Parliament has for the first time imposed a new duty, i.e., one which does not exist at common law, and those which, though in terms creating an obligation, in effect do no more than impose penalties in circumstances where a right of action already exists *aliunde*. The fact that the duties he was concerned with (under s. 2 of the Food and Drugs Adulteration Act, 1928) were of the latter kind is noticed by his lordship as an additional reason for excluding the civil action.

But the main question which has been debated in practically all cases is the effect of a stipulated penalty upon the existence of a civil right of action. This being a question of the " scope and language " of the statute, it is interesting to note that in determining the *scope* of the statute some account has been taken, on at least one occasion, of another contemporary statute dealing with the same subject—see *per* Greer, L.J., in *Monk* v. *Warbey*, *supra*, at p. 80.

The principal authorities of the present century are the two cases, already mentioned, of *Phillips* v. *Britannia Hygienic Laundry Co.* and *Monk* v. *Warbey*. Both are decisions of the Court of Appeal, and both are concerned, as are also two recent cases in the King's Bench Division, with statutory duties relating to road vehicles. The axiom that the decisive factor in cases on this topic is the true construction of the particular statute could not be better illustrated than by the fact that these four decisions, dealing as they do with facts essentially similar though with different statutory provisions, are not the same. In all four cases the Act concerned provided a sanction for breach in the shape of a penalty or fine. In *Phillips'* case, *supra*, it was held that a contravention, without negligence, of a statutory order of 1904 requiring a motor car and its fittings, when used on the highway, to be in such a condition as not to cause danger to any person on the highway was not actionable at the suit of a person suffering damage by the breaking of the axle of a lorry. The duty being an absolute one, there was a breach of it, but the Divisional Court and the Court of Appeal were unanimous in holding that it was a public duty, only to be enforced by the penalty prescribed, and not otherwise.

On the other hand, in *Monk* v. *Warbey*, *supra*, the breach complained of consisted in permitting a vehicle to be used by a person not insured against third party risks, contrary to s. 35 of the Road Traffic Act, 1930. The action was brought by a " third party " injured in a collision caused by the negligent driving of the vehicle while it was being so used. Affirming Charles, J., the Court of Appeal held, in the words of Maugham, L.J. (at pp. 85–6), that " there is nothing in the Act to show that a personal action is precluded by reason of the existence of the special remedy for a breach ; and further that there is sufficient ground for coming to the conclusion that s. 35 was passed for the purpose of giving a remedy to third persons who might suffer injury by the negligence of the impecunious driver of a car." The action therefore succeeded.

In each of the recent cases the plaintiff failed in his claim. *Badham* v. *Lambs, Ltd.* [1946] 1 K.B. 45 is a decision of du Parcq, L.J., as he then was, sitting as an additional judge of the King's Bench Division. The statute relied on was s. 8 (1) of the Road Traffic Act, 1934, whereby it is unlawful to sell a motor vehicle for delivery in such a condition that its use on a road in that condition would be unlawful. The plaintiff purchased a second-hand car from the defendants and, as appears from other reports, was involved, after having driven it some 27 miles, in a road accident by reason of a defect in the braking system. His lordship thought the case indistinguishable from *Phillips'* case, holding that the statute was not seeking to protect a purchaser, who, after all, could make a contract to protect himself, though this particular purchaser had not done so ; further that " it would not be right to say that Parliament was seeking to protect purchasers in the sense that it was giving a right of action to them as a class of persons, viz., as members of the public using the highway."

In *Clark and Wife* v. *Brims* [1947] 1 All E.R. 242, one of the grounds of the plaintiffs' claim was that a collision in which they were injured was caused by the failure of the defendant to carry during the hours of darkness a rear light on his vehicle pursuant to s. 1 of the Road Transport Lighting Act, 1927. Morris, J., absolved the defendant from negligence, and, remarking that the statutory duties relied on were similar to those in *Badham* v. *Lambs, Ltd.*, also followed *Phillips'* case. While noticing *Monk* v. *Warbey*, the learned judge held that the particular section which he had to construe imposed duties which were public duties only, and did not in addition impose a duty which was enforceable by an individual aggrieved.

Not forgetting that each case turns on the interpretation of the particular statute, we may perhaps sum up by saying that, where a penalty is provided, the court will require some very clear indication that the Legislature intended also to confer a civil right of action. In *Monk* v. *Warbey* that indication was inferred from the circumstance that the victim of the negligence of an uninsured and impecunious driver is particularly prejudiced in that he loses the fruit of his common-law remedy by the lack of an insurance which will enable a judgment to be satisfied. The negligence of the driver was admitted in that case. The statutory duty was a new duty (compare Slesser, L.J., in *Square's* case, *supra*), and the right of action claimed was not an alternative to the common law remedy, but a separate and supplementary right. In the two recent cases, as in *Phillips* v. *Britannia Hygienic Laundry Co.*, the unsuccessful contention was that the breach of statutory duty gave rise to a cause of action which took the place of the common-law one, the latter being for one reason or another inapplicable.

DIVORCE LAW AND PRACTICE

FURTHER POINTS ON SECURED MAINTENANCE

CONTINUING the subject of secured maintenance which was considered in the last article (91 SOL. J. 317), there are a few further matters to which reference may be made.

Time of making application

It will be remembered that with regard to the time when an order for secured maintenance may be made subs. (1) of s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925, provides that : " The court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that . . . ", and with regard to the power to make an order for permanent maintenance, subs. (2) provides that : " In any such case as aforesaid the court may, if it thinks fit, by order . . ." In two cases prior to this Act, the Court of Appeal considered the meaning of the word " on " in connection with the construction of the corresponding section of the previous Act, namely, the Matrimonial Causes Act, 1907, s. 1 (1) and (2), the relevant words of which are identical with the present section.

In *Scott* v. *Scott* [1921] P. 107, the court had to consider an application under subs. (2) for permanent maintenance which was made seven years after the decree *nisi* for dissolution had been made absolute, and it was held, reversing the decision of the President, that the words did not give the judge an unfettered discretion as to the time within which he would allow a petition for such maintenance to be filed, but that they meant that the petition must be filed " at " or " within a reasonable time after " the decree, what is a reasonable time depending upon the circumstances of each case ; and the time in that case was unreasonable. Scrutton, L.J., stated that the words " in any such case " appeared to him to relate to

the words " on any decree for dissolution or nullity of marriage," and the question therefore was what limit was imposed for the making of any application " on any decree for dissolution or nullity of marriage." In *Fox* v. *Fox* [1925] P. 157, however, the question concerned the jurisdiction to make such an order after the decree *nisi* had been granted for a dissolution but before the decree had been made absolute. It was there held that the word " on " meant before, or simultaneously with, or after act done, according as reason and good sense required with reference to the context, and that the court had such a power before the decree absolute and in anticipation of it upon materials which enabled the court to make such an order at the same time as the decree for dissolution, such an order of course not taking effect (so far as any payment under it was concerned) until after the decree had been made absolute.

Under the Matrimonial Causes Rules, 1947, any claim for maintenance or secured provision may now be included in the prayer of the petition (r. 4 (3) (*e*)), but if no such claim is included application may be made in the case of proceedings for divorce by the petitioner at any time after the time for entering an appearance to the petition has expired, and by a respondent spouse at any time after entering an appearance to the petition, but no application may be made later than two months after final decree except by leave (r. 44 (1)). In *Fisher* v. *Fisher* [1942] P. 101 an application was made by a wife petitioner for leave to apply for permanent maintenance after divorce under the corresponding rule of the Matrimonial Causes Rules, 1937, in which the words were the same with the exception that leave had to be obtained if the application was made later than one month after the final decree. Leave was refused by Henn Collins, J., but on appeal was granted by the Court of Appeal. In his judgment, Lord Greene, M.R., stated that the first question which arose depended upon the effect to be given to subs. (1) of s. 190 of the Act of 1925, *supra*. The application then before the court being for leave to make an application under the section, if under the section the court had no jurisdiction to entertain it the matter ought to be stopped *in limine* by refusing leave to make the application which was being asked for under r. 44; and he pointed out that if the court granted the application all it was doing was to give permission to make such an application, and it was not dealing in any way with the merits of the application, nor tying the hands of the judge before whom the application would come. In granting leave, Lord Greene stated that the court had evidence which was not before Henn Collins, J., from which it appeared that the wife, whose decree had been made absolute in 1934, had relied upon a continuance of alimony paid by her former husband and his undertaking to settle certain property on her, and had made no application until 1941, when all payments to her and negotiations for a settlement had come to an end. It was upon this ground that the decision in *Scott's* case, *supra*, was distinguished, and also the decision in *Mills* v. *Mills* [1940] P. 130, in which the Master of the Rolls had made certain observations with regard to such an application being made eight years after the decree absolute, to the effect that an order made on such an application launched so many years afterwards would not have been an order made " on " a decree for divorce.

Death of husband

It was held in *Dipple* v. *Dipple* [1942] P. 65, that where a wife who had been granted a decree absolute of divorce had not obtained an order for secured maintenance against her husband at the time of his death, her right to apply for such an order was not a " cause of action " against him within s. 1 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, with the result that upon his death her right to an order did not survive against his estate.

Conduct of the parties

The court has the power under s. 190 to make such an order as, having regard to the wife's fortune, if any, to the ability of her husband and to the conduct of the parties, the court may deem to be reasonable. In *Chichester* v. *Chichester* [1936] P. 129, where a wife had obtained a decree absolute of divorce, the registrar had recommended an order (*inter alia*) for her permanent maintenance of £272 and security to the extent of £200 (both the sum secured and the balance of the maintenance to be limited during the joint lives), and it was argued that on principle the proportion of the amount secured ought not to exceed a third or half of the total amount of the maintenance ordered. In rejecting this argument the President said that the only considerations which should be followed by the court are, first, whether there should be any and what security for the maintenance ordered, and, further, what sum, if any, it would be reasonable to order to be paid in addition to the secured maintenance, having regard to the matters referred to in the section set out above.

Although the adultery of the wife is conduct which is proper to be considered at the hearing of her petition for permanent maintenance, and proceedings under the section are proceedings separate from those for dissolution, it has been held that where the husband had refrained from using evidence as to this at the hearing of the suit for divorce it was against public policy to allow him to raise such an issue in order to free himself from his liability to support his wife: *Robinson* v. *Robinson* [1943] P. 43.

Finally, in *Dailey* v. *Dailey* [1947] 1 All E.R. 847, the conduct of the parties was considered where a husband had obtained a decree of nullity against his wife on the ground of her wilful refusal to consummate the marriage by reason of her refusal to permit sexual intercourse without the use of contraceptives. There the registrar had recommended that the husband should secure her for her life *dum sola* the nominal sum of £52, less tax, and that he should in addition pay her during joint lives *dum sola* or till further order maintenance at the rate of £75 per annum, less tax. It was held that the court was bound to have regard to the whole history of the case, including the fact that the husband had assented for nineteen years to the conditions as to intercourse made by his wife, and had taken advantage of such limited intercourse as she had allowed him. In his judgment, Willmer, J., stated that he saw a considerable distinction between the conduct of the wife then before him and that of a wife who committed adultery or any of the well recognised matrimonial offences, and that it was vital to pay regard to the fact that her conduct was not recognised by either party as affording grounds of relief until the decision in *Cowen* v. *Cowen* [1946] P. 36. It would be unjust to treat the case as a simple one of a " guilty " wife who by her conduct had forfeited any right to ask for more than a compassionate allowance to save her from utter destitution, but it was a case where the husband could, and should, make some substantial provision for her.

COMPANY LAW AND PRACTICE

THE CONTROL OF BORROWING ORDER, 1947—III

Most of the main provisions of this order have now been noticed in these articles, and in particular the question of raising money by the issue of shares was discussed last week. It was then pointed out that there was no general control of issuing fully paid shares, but only of raising money by the issue of shares.

Article 3, which imposes that control, excepts from its provisions money raised by the issue by a private company of fully paid shares to vendors of any undertaking sold to the company, provided that the money which is raised by such a transaction is either cash forming part of the assets of the undertaking or cash which has been paid to the vendors as or as part of the price of the undertaking.

So far as the undertaking acquired by the company consists of things other than cash, there is as we have seen no control, and the first limb of this provision is no doubt aimed

at preventing a private company raising cash by purchasing an undertaking with a bank account specially inflated for the purpose and then paying for the undertaking and the cash in shares. The second limb merely provides that if instead of paying for the undertaking by the issue of fully paid shares the company prefers to do it by paying cash to the vendors and then allotting shares for cash, the company shall be at liberty to carry out the transaction in this way. It will not, however, under this provision, be entitled to raise any cash which it has not already paid as the purchase price of the undertaking.

That then, in a rather summary way, disposes of art. 3 which deals with raising money by the issue of shares.

It must be borne in mind, where the order speaks of shares, that this includes any perpetual debentures or debenture stock, and consequently the raising of money by the issue of perpetual debentures or debenture stock is not to be regarded as borrowing money.

We now come to art. 4, which is headed " Issues of partly paid shares and other issues of securities." The first paragraph of this article prohibits (still subject to the Part II exemptions) the issue without the consent of the Treasury of partly paid shares. As we have seen, raising money by the issue of shares is already controlled, and consequently this paragraph can only relate to issues of partly paid shares by which no money is raised, which must be a comparatively rare kind of transaction.

The remaining paragraphs of the article are no longer concerned with shares but are dealing with " securities," a wider expression which, for the purposes of this order, includes shares, and also bonds, notes, debentures and debenture stock.

Paragraph (2) prohibits a company (unless it comes within an exemption in Pt. II) from issuing any securities if the whole or any part of the consideration for that issue is the receipt of securities in another body corporate unless one or other of them is being wound up. In the light of this provision the statement made above that there is no general control on the issue of fully paid shares, but only on raising money by the issue of such shares, must be qualified. Acquiring securities in a body corporate by the issue of shares as well as acquiring cash is controlled by this order.

The effect of para. (3) of this article, taken in conjunction with Pt. II, is to prohibit without Treasury consent any transaction which involves the capitalisation of profits or reserves, and that paragraph further prohibits a company incorporated in England from raising or borrowing money outside Great Britain, or exchanging new securities for redeemable securities already issued, without Treasury consent, unless the transaction comes within the exemptions in Pt. II. Paragraph (4) controls in a similar way the issue by foreign companies of securities to be registered in England if the transaction includes raising or borrowing money outside Great Britain or exchanging new securities for some already issued. This is an extension in the case of bodies corporate on the control of borrowing, for the main provision of art. 1, which controls borrowing, only refers to borrowing in Great Britain.

The provision in Pt. II as to the " amount involved " in a transaction, which has to be taken into account when deciding what further operations can be undertaken, has already been referred to. In particular, when dealing with an issue of securities, that amount is to be whichever is the greatest of (i) the amount of money raised; (ii) the total nominal value of the securities; or (iii) the value of any assets to be acquired in return for the securities. It should be noticed that the third basis can have no application in the case of the control imposed by art. 3, as that article is only concerned with raising money, and this basis can therefore only be applicable when the transaction is within the provisions either of art. 4 or conceivably of art. 5, which controls the issue by any foreign government of securities to be registered in England.

Regulation 6 of the Defence (Finance) Regulations not only prohibited, subject to the exemptions, an issue of capital without the consent of the Treasury, but also prohibited, subject to the exemptions, the issue of any prospectus or other document publicly offering for sale any securities which did not include a statement that the consent required by the regulation had been obtained to the issue or offer.

This provision, as has been noticed, is still in force in relation to those offers of sale which do not come within the new Capital Issues Exemption Order, but the only reference to prospectuses or similar documents in the Control of Borrowing Order is to be found in art. 6. That article provides that subject to the usual exemptions a person shall not without the consent of the Treasury circulate any offer for subscription, sale or exchange of any securities of a foreign company or a foreign government either to the public or to the existing holders of securities of such company or government.

Thus, so far as companies incorporated in Great Britain are concerned, there is no control of prospectuses as such and in no case is a prospectus required to bear on its face any statement about Treasury consent. The only case in which a requirement exists to include a statement about Treasury consent is under the surviving provisions of reg. 6, i.e., in the cases of offers for sale of securities of a body corporate incorporated in England or Scotland, and that requirement is subject to the exemption in the Capital Issues Exemptions Order, 1947. That exemption, it will be remembered, exempts all offers for sale of securities other than shares or stock, and in this connection it should be noted that the words shares and stock bear their technical meanings, for that order provides that stock is not to include debenture stock, whereas in the Borrowing Order " share " is defined to include any perpetual debenture or perpetual debenture stock.

The main provisions of this order have now been very briefly reviewed, and it is to be hoped that these articles may have given a general outline of the way in which the order controls the borrowing or raising of money, particularly in the case of English companies. The order, however, is not easy of comprehension at first sight and it will be necessary to study it closely to see whether or not any particular transaction comes within its purview.

There is perhaps one other point worthy of being mentioned. Regulation 6 provided that a security should not be invalid by reason that the consent required had not been given to its issue. No similar provision is to be found in the Borrowing Order itself, for that matter is dealt with by s. 1 (3) of the Borrowing (Control and Guarantees) Act, 1946, which provides that the provisions of the Schedule to that Act (which relate to enforcement and penalties) shall have effect in relation to orders made thereunder, such as the order now under consideration, but that the rights of the persons concerned in any transaction shall not be affected by the fact that the transaction was in contravention of any such order.

A CONVEYANCER'S DIARY

THE INHERITANCE (FAMILY PROVISION) ACT—I.

In another week or two the Inheritance (Family Provision) Act, 1938, will have been nine years on the statute book and eight years in force. I find that I have said nothing about it since I reviewed the cases of the year 1944, and very little since a year before that. The time may, perhaps, have come to see what principles have been evolved for its application.

Section 1 (1) provides that where a person dies domiciled in England (a word which, for this purpose, is treated as including Wales), leaving (*a*) a wife or husband; (*b*) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself; (*c*) an infant son; or (*d*) a son who is, by reason of some mental or physical disability, incapable of maintaining himself;

and leaving a will, then, if the court, on the application of a person within one of the four categories mentioned above (called in the Act a "dependant") is of the opinion that the will does not make reasonable provision for the maintenance of that dependant, the court may order that "such reasonable provision as the court thinks fit . . . be made out of the testator's net estate for the maintenance of that dependant." Under subs. (2), it is provided that the maintenance shall be by way of periodical payments of income and shall cease on the remarriage of the surviving spouse or on the recipient, if any other sort of dependant, ceasing to answer the description of a dependant. By subs. (3) the amount of the annual income which may be made applicable by an order under the Act is not to exceed half the net estate if the testator leaves no dependants except a surviving spouse, or if he leaves no dependants except children, or two-thirds if he leaves dependants of both sorts. Subsection (4) lays down that where the value of the net estate does not exceed £2,000 "the court shall have power to make an order providing for maintenance, in whole or in part, by way of a payment of capital, so however that the court, in determining the amount of the provision, shall give effect to the principle of the last preceding subsection." The subsection referred to is the one which provides the upper limits of maintenance.

Further subsections provide that the court is not to order maintenance in such a way as to involve a realisation which would be improvident, having regard to the interests of the other persons entitled to the estate; that the court is to pay regard to the "past, present or future capital or income from any source" of the applicant, and to the testator's reasons, so far as ascertainable, for what he has done or left undone.

The first main principle which has emerged is that the court orders maintenance; it does not grant legacies. Thus, if the estate is so small that its income could not provide maintenance for anyone, no order will be made under the Act (*Re Vrint* [1940] Ch. 920).

The second such principle is that the onus is always on the applicant to show that the dispositions actually made by the testator are unwarranted. There is no jurisdiction to interfere unless that is first found. No dependant is given a right to maintenance. All that the Act does is to give the court a power to interfere if the testator leaves dependants and if that onus is discharged. The first pronouncement on this matter was by Bennett, J., in *Re Brownbridge* (1942), 193 L.T. News. 185. In *Re Styler* [1942] Ch. 387, Morton, J., expressly approved this statement of Bennett, J. Naturally, the onus varies in weight. Thus, it is fairly easy for a widow or an invalid child to discharge it if she or he is left nothing, while it is not at all easy for a widower to do so. But the decisions in *Re Brownbridge* and *Re Styler* are extremely important since they make it impossible for the Act to be used as a means of introducing into our law, by a side-wind, the Roman system by which dependants are entitled as of right to receive certain benefits from a testator.

Having reached the position that there is a dependant and that it was *prima facie* unwarrantable for the testator to leave him or her nothing (or little), the court must still weigh the testator's duty to that dependant against his duty to those for whom by his will he has actually provided. The basis of this weighing is morality, not law. The court gives effect to considerations going far beyond the purely legal ones. Thus, in *Re Joslin* [1941] Ch. 200, Farwell, J., declined to interfere with the provisions of a will which gave the whole of a very small estate to a woman with whom the testator had been living and who had had two illegitimate children by him, to the exclusion of his wife, from whom he was separated.

It was thought by many practitioners in the early years that subs. (4) of s. 1 of the Act enabled the court, in cases where the net estate is worth under £2,000, to award capital sums in place of sums of income, and that those capital sums could go up to two-thirds of the net estate if there were dependants of both classes, or half the net estate if there is a spouse only or children only. This belief was an error, as Uthwatt, J., decided in *Re Catmull* [1943] Ch. 262. The correct way of applying s. 1 (4) is to ascertain the income of the net estate for the purposes of the Act, then to decide the amount of annual maintenance that ought to be awarded, just as if the estate exceeded £2,000. Having done that, the court will then apply s. 1 (4), if it considers it desirable to do so, by ascertaining the actuarial valuation of the maintenance which it would have awarded and then making an award of the amount of such valuation. Normally the lump sum thus available is much less than half the net estate, because a widow is usually elderly and the interests of children are defeasible comparatively easily unless the child is a hopeless invalid. I am not very clear how actuarial effect can be given to the prospect of the widow remarrying (in which event an award of maintenance ceases to operate). My impression is that, in practice, nothing is done about this factor except that the valuation is placed below the amount of the value of the maintenance as a life annuity. How much below is arbitrary.

The rate of interest at which maintenance is to be calculated is obscure. In *Re Catmull*, Uthwatt, J., used 3½ per cent., and so did Romer, J., in *Re Westby* [1946] W.N. 141. But in an unreported case in which I was engaged in November, 1945, Cohen, J., held that 3 per cent. was right. My own practice in advising is to say that it is 3 per cent.; I should be glad to know what is done by others, and I will publish the result here. So far I have not been challenged as to the correctness of 3 per cent.

I propose next week to say something about the procedure under the Act, which is abnormal, and as to some of the reported cases. In conclusion, I should like to point particularly to the extremely short limit of time under s. 2 of the Act, whereby all proceedings under the Act are to be taken within six months of the first grant of representation. There is no extension of time for infancy or any other disability. Nor could there be, because otherwise it would never be safe for personal representatives to wind up the estate and distribute it. It is essential for the solicitor for a potential applicant to watch the time closely and to issue the summons within the prescribed period. It is often necessary to take that step without waiting for the facts to be fully elucidated or for counsel's advice to be sought. Fortunately, the summons is simple in form, as we shall see next week.

LANDLORD AND TENANT NOTEBOOK

STATUTORY TENANCIES: EFFECTS OF LANDLORDS' FORBEARANCE

In two recent cases, *Oak Property Co., Ltd.* v. *Chapman* [1947] 2 All E.R. 1; 91 Sol. J. 324 (C.A.), and *Bird* v. *Hildage* [1947] 2 All E.R. 7 (C.A.), the effects of condonation of irregularities by landlords of controlled property were gone into. Other important questions were also discussed and decided, the first mentioned case in particular giving us new authority on the status of statutory tenants and those to whom they may grant or purport to grant subtenancies; with these other points I will deal separately on another occasion.

As far as waiver is concerned, the facts of *Oak Property Co., Ltd.* v. *Chapman* were as follows: the plaintiffs had let a flat to the first of two defendants, who on the expiration of the tenancy held over as a protected tenant. The lease prohibited unauthorised alienation. The first defendant "sublet" part of the premises to the second defendant (who was held, despite the fact that the mesne lessor was a statutory tenant, to be a subtenant for the purposes of the protection conferred by the Increase of Rent, etc., Act, 1920, s. 15 (3)). No consent was sought for this subletting, but, after the plaintiffs had become aware of it, they accepted two payments of rent from the first defendant before issuing proceedings for possession.

In *Bird* v. *Hildage* the defendant had held premises of the plaintiff under an agreement making rent payable

COUNTY COURT CALENDAR FOR JULY, 1947

Circuit 1—Northumberland
His Hon. Judge Richardson
Alnwick,
Berwick-on-Tweed,
Blyth,
Consett, 18
Gateshead, 22
Hexham,
Morpeth, 21
†*Newcastle-upon-Tyne 2, 17 (B.), 25 (J.S.)
North Shields, 24
Seaham Harbour, 28
South Shields, 16
Sunderland, 30, 31

Circuit 2—Durham
His Hon. Judge Gamon
Barnard Castle, 31
Bishop Auckland, 1, 29
Darlington, 2, 16, 30
*Durham, 15 (J.S.), 28
Guisborough, 25
Leyburn, 14 (R.)
Middlesbrough, 10, 24 (J.S.)
Northallerton,
Richmond, 17
†*Stockton-on-Tees, 11, 22
Thirsk, 18 (R.)
West Hartlepool, 23

Circuit 3—Cumberland
His Hon. Judge Allsebrook
Appleby,
†*Barrow - in - Furness, 2, 3
Brompton,
*Carlisle, 16
Cockermouth, 10
Haltwhistle,
*Kendal, 15
Keswick,
Kirkby Lonsdale,
Millom, 7
Penrith, 17
Ulverston, 1
†*Whitehaven, 9
Wigton,
Windermere, 10 (R.)
*Workington,

Circuit 4—Lancashire
His Hon. Judge Peel, O.B.E., K.C.
†*Blackburn, 7, 14 (J.S.), 18, 28, 30 (R.B.)
†*Blackpool, 2, 3, 9, 10, 23, 24 (J.S.) (R.B.)
Chorley, 17
Lancaster, 4
†*Preston, 1, 8, 22 (J.S.), 25 (R.B.)

Circuit 5—Lancashire
His Hon. Judge Ormerod
Accrington, 24
Bolton, 9, 23 (J.S.)
*Burnley, 3
Bury, 21 (J.S.), 28 (R.)
Colne, 10
Nelson,
Rochdale, 11 (J.S.), 18 (R.)
Salford, 7, 8 (J.S.), 22, 28, 29 (J.S.)

Circuit 6—Lancashire
His Hon. Judge Crosthwaite
His Hon. Judge Harrison
†*Liverpool, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31
St. Helens, 9, 23
Southport, 8, 22
Widnes, 25
*Wigan, 10, 24

Circuit 7—Cheshire
His Hon. Judge Burgis
Altrincham, 9 (J.S.), 30
*Birkenhead, 9 (R.), 16, 18, 21, 22, 23, 28, 30 (R.)
Chester, 8, 29
*Crewe, 4
Market Drayton, 25
Nantwich, 11
*Northwich, 24
Runcorn, 15
*Warrington, 10, 31 (J.S.)

Circuit 8—Lancashire
His Hon. Judge Rhodes
Leigh, 4, 18
†*Manchester, 1, 2, 3, 7, 8, 9, 10, 11 (B.), 14, 15, 16, 17, 21, 22, 23, 24, 25 (B.), 28, 29, 30, 31

Circuit 10-Lancashire
His Hon. Judge Raleigh Batt
*Ashton-under-Lyne, 11
Congleton, 25
Hyde, 30
*Macclesfield, 17
*Oldham, 3, 16, 24 (J.S.)
Rawtenstall, 23
Stalybridge, 31 (J.S.)
*Stockport, 1, 2 (J.S.), 15
Todmorden, 29

Circuit 12—Yorkshire
His Hon. Judge Rice-Jones
*Bradford, 7, 8, 10, 11, 18 (J.S.)
Dewsbury, 24
*Halifax, 25
*Huddersfield, 22, 23
Keighley, 15
Otley, 16
Skipton, 17
Wakefield, 9

Circuit 13—Yorkshire
His Hon. Judge Essenhigh
*Barnsley, 2, 3, 4
Glossop, 9 (R.), 30
Pontefract, 7, 8, 9
Rotherham, 22, 23
*Sheffield, 1 (J.S.), 10, 11, 17, 18, 24, 25, 29 (J.S.), 31

Circuit 14—Yorkshire
His Hon. Judge Stewart
Harrogate, 4
Leeds, 2, 3 (J.S.), 9, 16, 17 (J.S.), 23, 29 (R.B.), 30, 31 (J.S.)
Ripon, 15
Tadcaster, 8
York, 22

Circuit 16—Yorkshire
His Hon. Judge Griffith
Beverley, 11
Bridlington, 7
Goole, 22 (R.), 25
Great Driffield, 21
†*Kingston - upon - Hull, 14 (R.), 15 (R.), 16, 17, 18 (J.S.), 21 (R.B.), 28 (R.)
Malton, 23
Scarborough, 8, 9, 15 (R.B.)
Selby, 4
Thorne, 24
Whitby, 9 (R.), 10

Circuit 17—Lincolnshire
His Hon. Judge Shove
Barton-on-Humber, 3
†*Boston, 10 (R.), 17, 24 (R.B.)
Brigg,
Caistor,
Gainsborough, 16 (R.), 21
Grantham, 2 (R.), 9 (R.), 18
†*Great Grimsby, 3 (R.B.), 9 (J.S.), 10, 29, 30 (J.S.), 31 (*R. every Monday*)
Holbeach, 24 (R.)
Horncastle, 25 (R.)
*Lincoln, 3 (R.), 14
*Louth, 15
Market Rasen, 8 (R.)
Scunthorpe, 7 (R.), 8, 22
Skegness, 7
Sleaford, 8 (R.)
Spalding, 16
Spilsby, 4 (R.)

Circuit 18—Nottinghamshire
His Hon. Judge Caporn
Doncaster, 9, 10, 11
East Retford, 8 (R.), 29
Mansfield, 1, 22
Newark, 29 (R.)
*Nottingham, 3 (R.B.), 16, 17, 18 (J.S.), 23, 24, 25 (B.)
Worksop, 15, 22 (R.)

Circuit 19-Derbyshire
His Hon. Judge Willes
Alfreton, 1
Ashbourne,
Bakewell, 8
Burton-on-Trent, 9 (R.B.)
Buxton,
Chesterfield, 4, 11, 18 (J.S.)
*Derby, 2, 15 (R.B.), 16, 17 (J.S.)
Ilkeston, 15
Long Eaton, 3
Matlock,
New Mills, 7
Wirksworth, 10

Circuit 20—Leicestershire
His Hon. Judge Field, K.C.
Ashby-de-la-Zouch, 17
*Bedford, 15 (R.B.), 23
Hinckley, 16
Kettering, 22
*Leicester, 7, 8, 9 (J.S.) (B.), 10 (B.), 11 (B.), 28, 29, 30 (J.S.) (B.), 31 (B.)
Loughborough, 15
Market Harborough, 14
Melton Mowbray, 25
Oakham, 18
Stamford, 21
Wellingborough, 24

Circuit 21—Warwickshire
His Hon. Judge Forbes
His Hon. Judge Tucker (Add.)
*Birmingham, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15 (B.), 16, 17, 18, 21, 22, 23, 24, 25, 28, 29 (B.), 30, 31

Circuit 22—Herefordshire
His Hon. Judge Langman, O.B.E.
Bromsgrove, 18
Bromyard,
Evesham, 9
Great Malvern, 21
Hay,
*Hereford, 15, 17
*Kidderminster, 8, 22
Kington,
Ledbury,
*Leominster, 14
Ross,
*Stourbridge, 3, 4
Tenbury,
*Worcester,

Circuit 23 — Northamptonshire
His Hon. Judge Hamilton
Atherstone, 24
Banbury, 25
Bletchley, 22
Chipping Norton, 16
*Coventry, 7 (R.B.), 8, 21
Daventry, 23
Leighton Buzzard, 31
*Northampton, 8 (R.) (R.B.), 14, 15
Nuneaton, 9
Rugby, 17
Shipston-on-Stour, 28
Stow-on-the-Wold, 30
Stratford-on-Avon, 29
*Warwick, 18 (R.B.)

Circuit 24 — Monmouthshire
His Hon. Judge Thomas
Abergavenny,
Abertillery, 15
Bargoed, 16
Barry, 10
†*Cardiff, 7, 8, 9, 11
Chepstow,
Monmouth, 22
*Newport, 24, 25
Pontypool and Blaenavon, 23, 28
*Tredegar 17

Circuit 25—Staffordshire
His Hon. Judge Norris
*Dudley, 15, 22, 29
Redditch, 4
*Walsall, 10, 17, 24, 31
*West Bromwich, 9, 16, 23, 30
*Wolverhampton, 11, 18, 25

Circuit 26—Staffordshire
His Hon. Judge Tucker
*Hanley, 10, 24, 25
Leek, 14
Lichfield,
Newcastle - under - Lyme, 15
*Stafford, 4
Stoke-on-Trent, 9
Stone, 28
Tamworth, 11
Uttoxeter, 18

Circuit 28-Shropshire
His Hon. Judge Samuel, K.C.
Brecon, 18
Bridgnorth, 16
Builth Wells, 10
Craven Arms, 9
Knighton, 8
Llandrindod Wells, 11
Llanfyllin,
Llanidloes,
Ludlow, 14
Machynlleth,
Madeley, 17
*Newtown,
Oswestry, 15
*Shrewsbury, 21, 24
Wellington, 22
Welshpool,
Whitchurch, 23

Circuit 29—Caernarvonshire
His Hon. Judge Ernest Evans, K.C.
Bala,
†*Bangor, 14
Blaenau Festiniog, 21
*Caernarvon, 16
Colwyn Bay, 17
Conway,
Corwen,
Denbigh,
Dolgelly,
Flint,
Holyhead,
Holywell, 18
Llandudno,
Llangefni, 15
Llanrwst, 24
Menai Bridge,
Mold, 25 (R.)
*Portmadoc, 22
Pwllheli, 18 (R.)
Rhyl, 23
*Ruthin, 29
Wrexham, 30, 31

Circuit 30—Glamorganshire
His Hon. Judge Williams, K.C.
*Aberdare, 1
Bridgend, 21 (R.), 22, 23, 24, 25
Caerphilly, 17 (R.)
Merthyr Tydfil, 3
*Mountain Ash, 2
Neath, 16, 17, 18
*Pontypridd, 8, 9, 10, 11
*Porth, 7
Port Talbot, 15
*Ystradyfodwg,

Circuit 31—Carmarthenshire
His Hon. Judge Morris, K.C.
Aberayron, 30 (R.)
†*Aberystwyth, 25
Cardigan, 21
†*Carmarthen and Ammanford, 1, 2
†*Haverfordwest, 16
Lampeter,
Landovery, 28
Llanelly, 22, 24
Narberth, 14
Newcastle Emlyn,
Pembroke Dock,
*Swansea, 7, 8, 9, 10, 11

Circuit 32—Norfolk
His Hon. Judge Carey Evans
Beccles, 8
Diss, 15
Downham Market, 17
East Dereham,
Fakenham,
†*Great Yarmouth, 3
Harleston,
Holt,
†*King's Lynn, 10
*Lowestoft, 2
North Walsham,
*Norwich, 21, 22, 23
Swaffham, 30
Thetford, 29

Circuit 33—Essex
His Hon. Judge Hildesley, K.C.
Braintree, 11
*Bury St. Edmunds, 22
*Chelmsford, 1, 29
Clacton, 15
Colchester, 2, 3, 30, 31
Eye,
Felixstowe, 23
Halesworth, 21
Halstead,
Harwich, 18
Ipswich, 4, 16, 17
†*Maldon, 10
Saxmundham, 28
Stowmarket, 25
Sudbury, 14
Woodbridge,

Circuit 34-Middlesex
His Hon. Judge Tudor Rees
His Hon. Judge Pratt
Brentford, 2, 4, 7, 9, 11, 14, 16, 18, 21, 25, 28, 30
Uxbridge, 1, 8, 15, 29

Circuit 35 — Cambridgeshire
His Hon. Judge Campbell
Biggleswade, 1
Bishops Stortford, 15
*Cambridge, 4 (R.B.), 23 (J.S.) (B.), 24
Ely, 21
Hitchin, 11
*Huntingdon, 4 (R.), 17
Luton, 3 (J.S.) (B.), 4, 24 (R.B.)
March, 14
Newmarket, 25
*Oundle, 9
Peterborough, 4 (R.), 7, 8
Royston, 18
Saffron Walden,
Thrapston, 16
Wisbech, 22

Circuit 36—Berkshire
His Hon. Judge Hurst
*Aylesbury, 17 (R.B.)
Buckingham, 15
Cheltenham, 8, 9, 29
Henley-on-Thames,
High Wycombe, 3
Northleach, 7
Oxford, 10, 21, 28 (R.B.), 31
Reading, 10 (R.B.), 16, 17, 18
Tewkesbury, 14
Thame,
Wallingford, 14
Wantage, 22
Witney, 23

Circuit 37-Middlesex
His Hon. Judge Sir Gerald Hargreaves
His Hon. Judge Alun Pugh
Chesham, 1
*St. Albans, 22, 25
West London, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 38-Middlesex
His Hon. Judge Done
His Hon. Judge Whitmee
Barnet, 8, 22
*Edmonton, 1, 3, 4, 10, 11, 15, 17, 18, 21, 24, 29, 31
Hertford, 2
Watford, 9, 16, 23, 30

Circuit 39-Middlesex
His Hon. Judge Englebach
His Hon. Judge Pratt (Add.)
Shoreditch, 1, 3, 4, 7, 8, 10, 11, 14, 15, 17, 18, 21, 22, 24, 25, 28, 29, 31
Windsor, 2, 9, 16, 23, 30

Circuit 40-Middlesex
His Hon. Judge Tylor, K.C.
His Hon. Judge Drucquer (Add.)
His Hon. Judge Alun Pugh (Add.)
Bow, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 41-Middlesex
His Hon. Judge Earengey, K.C.
His Hon. Judge Trevor Hunter, K.C. (Add.)
Clerkenwell, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 42-Middlesex
His Hon. Judge Davies, K.C.
Bloomsbury, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 43-Middlesex
His Hon. Judge Bensley Wells
Marylebone, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 44-Middlesex
His Hon. Judge Drucquer
His Hon. Judge Davies, K.C. (Add.)
Westminster, 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31

Circuit 45—Surrey
His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 1, 4, 8, 11, 15, 18, 22, 25, 29
*Wandsworth, 2, 3, 7, 9, 10, 14, 16, 17, 21, 23, 24, 28, 30, 31

Circuit 46-Middlesex
His Hon. Judge Neal
*Willesden, 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 16, 17, 18, 21, 22, 23, 24, 25, 29, 30, 31

Circuit 47—Kent
His Hon. Judge Daynes, K.C.
Southwark, 4, 7, 11, 14, 18, 21, 25, 28
Woolwich, 3, 10, 16, 17, 23, 24

Circuit 48—Surrey
His Hon. Judge Collingwood
His Hon. Judge Dale
Dorking, 17
Epsom, 8, 9, 15, 23
*Guildford, 3, 24
Horsham, 10
Lambeth, 2, 3, 4, 7, 8, 11, 14, 15, 18, 21, 23, 24, 25
Redhill, 16

Circuit 49—Kent
His Hon. Judge Clements
Ashford, 14
*Canterbury, 15
Cranbrook,
Deal, 4
†Dover,
Folkestone, 8
Hythe,
*Maidstone, 18
Margate, 24
†Ramsgate,
†*Rochester, 9, 10
Sheerness,
Sittingbourne, 22
Tenterden, 21

Circuit 50—Sussex
His Hon. Judge Archer, K.C.
Arundel, 18
Brighton, 3, 4, 10, 17, 24, 25, 31
†*Chichester, 11
*Eastbourne, 16
*Hastings, 8, 29
Haywards Heath, 30
*Lewes,
Petworth,
Worthing, 1, 22

Circuit 51 — Hampshire
His Hon. Judge Topham, K.C.
Aldershot,
Basingstoke, 9
Bishops Waltham,
Farnham, 16
*Newport,
Petersfield, 11
†*Portsmouth, 3, 7 (B.), 10, 17
Romsey,
Ryde, 23
†*Southampton, 1, 4, 8, 9 (B.), 15
*Winchester, 2

Circuit 52—Wiltshire
His Hon. Judge Jenkins, K.C.
*Bath, 3 (B.), 10 (B.)
Calne,
Chippenham, 8 (R.)
Cirencester, 24
Devizes, 14 (R.)
Dursley,
*Frome, 16 (R.)
Hungerford, 21
Malmesbury, 17
Marlborough,
Melksham, 11
*Newbury, 7 (R.)
Stroud, 1
*Swindon, 2, 9 (B.)
Trowbridge, 4
Warminster,
Wincanton, 11 (R.)

Circuit 54-Somersetshire
His Hon. Judge Wethered, O.B.E.
†*Bridgwater, 18
†*Bristol, 7 (J.S.), 8, 9, 10, 11 (B.), 14, 15, 16, 17, 21 (J.S.), 25 (B.)
Gloucester, 22, 24
Minehead, 15 (R.)
Newent, 23 (R.)
Newnham, 18 (R.)
Thornbury,
*Wells, 1
Weston-super-Mare, 2

Circuit 55 — Dorsetshire
His Hon. Judge Arvstrong
Andover, 9 (R.)
Blandford,
*Bournemouth, 10 (R.), 15, 16, 17
Bridport, 29
Crewkerne, 15 (R.)
*Dorchester, 4
Lymington,
*Poole, 22, 23 (R.)
Ringwood,
*Salisbury, 3
Shaftesbury, 7
Swanage,
*Weymouth, 1
Wimborne,
*Yeovil, 10

Circuit 56—Kent
His Hon. Judge Sir Gerald Hurst, K.C.
Bromley, 1, 2, 22, 23
*Croydon, 4, 7, 8, 9, 16, 18, 25
Dartford, 10, 24
East Grinstead, 15
Gravesend, 14
Sevenoaks, 21
Tonbridge, 3
Tunbridge Wells, 17

Circuit 57-Devonshire
His Hon. Judge Thesiger
Axminster, 14 (R.)
†*Barnstaple, 22
Bideford, 23
Chard, 17 (R.)
†*Exeter, 10, 11
Honiton, 14
Langport, 21
Newton Abbot, 17
Okehampton, 18
South Molton,
Taunton, 7
Tiverton, 16
*Torquay, 8, 9
Torrington,
Totnes,
Wellington, 14 (R.)

Circuit 58—Essex
His Hon. Judge Hunter, K.C.
His Hon. Judge Andrew
His Hon. Judge Pratt (Add.)
Brentwood, 4 (R.)
Grays Thurrock, 8 (R.)
Ilford, 1, 2, 3, 7 (R.), 9, 10, 14 (R.), 15, 16, 17, 21 (R.), 22, 23, 24, 28 (R.), 29, 30, 31
*Southend, 2 (R.), 9, 10 (R.), 11, 16 (R.B.), 23 (R.), 24, 25

Circuit 59—Cornwall
His Hon. Judge Armstrong
Bodmin,
Camelford,
Falmouth,
Helston, 9
Holsworthy,
Kingsbridge,
Launceston, 21
Liskeard, 16
Newquay,
†*Penzance, 15
Plymouth, 22, 23, 24, 25
Redruth, 14
St. Austell, 8
Tavistock, 17
†*Truro, 18

The Mayor's & City of London Court
His Hon. Judge Sir Gerald Dodson
His Hon. Judge Beazley
His Hon. Judge McClure
His Hon. Judge Thomas
Guildhall, 1, 2 (A.), 3, 4 (J.S.), 7, 8, 9 (A.), 10, 11 (J.S.), 14, 15, 16 (A.), 17, 18 (J.S.), 21, 22, 23, 24, 25 (J.S.), 28, 29, 30 (A.), 31

---

* = Bankruptcy Court
† = Admiralty Court
R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

quarterly on the usual quarter-days, which agreement had expired. Both during the original term and during his statutory tenancy he had been in the habit of paying rent a month or so late, and neither the plaintiff's predecessor in title nor the plaintiff had complained of this. But in 1946 he did not send the Lady Day rent till 15th May; it was received on 16th May by the plaintiff's solicitors, who on that day sent plaint and particulars to the county court, and on 17th May returned the defendant's cheque with a covering letter stating that the matter had been entered in that court. In fact, the plaint was not entered till 21st May, and it was agreed that this date must be treated as the date of the commencement of proceedings. It was also conceded that the cheque was valid tender. But the question whether the condition set out in para. (*a*) of the Schedule to the Rent, etc., Restrictions (Amendment) Act, 1933 ("any rent lawfully due has not been paid"), obtained when proceedings commenced led to an examination of the question whether the plaintiff's past forbearance could and did prejudice him.

In *Oak Property Co., Ltd.* v. *Chapman* the question whether by accepting rent the landlord had so waived the breach of covenant as to disentitle him to rely on it was held to be a question of fact, but one to which the principles applicable were not the same as those applied in the case of waiver of forfeiture. In *Bird* v. *Hildage* the initial question was whether by suffering periodic defaults the landlord had lost the right to receive payment on the dates named in the agreement.

In *Oak Property Co., Ltd.* v. *Chapman* the county court judge had approached the problem as if it were one of enforcing forfeiture. The Court of Appeal held that this was the wrong approach. When a right of re-entry accrued by virtue of a forfeiture clause the law was—the lease being voidable and not void—that the landlord must elect and that acceptance of rent (at all events, before issuing a writ: see *Enever* v. *Evans* [1920] 2 K.B. 315) was unequivocal election not to avoid. These considerations did not apply in the case of a landlord of a statutory tenant who had broken a covenant and thus put the landlord in a position to claim possession. The obstacle to possession was that unless certain facts were found the court had no jurisdiction to make an order. Also, the obligation to pay rent continued by virtue of the statute: the tenant is protected as long as he observes the terms of the original tenancy in so far as they are consistent with the provisions of the Act (s. 15 (1) of the 1920 Act). It followed that the acceptance by a landlord of rent after knowledge of a non-continuing breach of covenant by a tenant entitling the landlord to go to court was not so unequivocal an act of affirmance of the tenancy as is acceptance of rent in like circumstances from a contractual tenant.

The county court judge who had tried *Bird* v. *Hildage* had been influenced by the decision in *Panoutsos* v. *Raymond Hadley Corporation of New York* [1917] 1 K.B. 767 (C.A.) when coming to the conclusion that the landlord was no longer entitled to punctual payment. In that case an agreement for a series of shipments of flour, each to be deemed a separate contract, was to be paid for by a (single) confirmed credit. The buyers opened a revocable credit, but the sellers, knowing of the qualification, made several shipments (for which they were duly paid) before purporting to cancel the agreement. It was held that they had no right to do this without first giving the buyers reasonable notice of their intention. But the court distinguished the authority of *Re Tyrer & Co. and Hessler and Co.* (1902), 86 L.T. 697, which arose out of a charterparty providing for periodic payments and reserving the right to withdraw the ship in default of such being made, and the distinction was later made clearer by the judgment in *Cape Asbestos Co.* v. *Lloyds Bank, Ltd.* [1921] W.N. 274: "The *Panoutsos* case had only reference to an act which had to be done once for all, and not to an act which had to be done periodically." The two last mentioned decisions had apparrently not been cited to the county court judge. The result was that, a tenancy agreement being one calling for periodic payments, the *Panoutsos* case did not apply, and the condonation of previous unpunctuality did not put the plaintiff out of court.

It is perhaps important to observe that both the recent decisions belong to the class of those which require delicate handling; if relied upon by the over-sanguine the result may, in some cases, be a pronouncement that no principles were laid down. For in *Oak Property Co., Ltd.* v. *Chapman* the court took care to point out that "whether in any case the acceptance of rent was an unequivocal act of affirmance of the tenancy was a question of fact for the judge to determine in the circumstances of the case," and gave the following guidance: "a landlord who has acquired full knowledge of a non-continuing breach of covenant by a statutory tenant entitling him to invoke the court's jurisdiction should be entitled thereafter to receive rent and should not by reason of such receipt be held to have waived the breach, *provided* he makes it clear at the time of or prior to the receipt that his receipt is without prejudice to his right to go to the court *and provided* he issues his summons for possession within such time as, having regard to all the circumstances of the case, the court hearing the summons regards as reasonable." Likewise in *Bird* v. *Hildage* the judgment allows for the possibility of "cases where the court can properly infer a variation of the original agreement."

To suggest what moral is pointed by the new authorities, I may mention that I once heard of a solicitor practising in a small market town who displayed his motto on a wall of his room. The motto consisted of the words "*Suum cuique*." And when clients who were conscious of grievances but ignorant of Latin and the Institutes asked for a translation, he was wont to oblige with "Sue 'em quick."

TO-DAY AND YESTERDAY

June 23.—On 23rd June, 1710, the Gray's Inn Benchers ordered: "Whereas by the ancient orders and usage of this Society no wine had been ever demanded of or allowed by the House to the Ancients or Bar in the Hall at meals, except one glass to the Ancients and one to the Bar, saving upon Grand Days only, until very lately that the one glass allowed to the Ancients and the like to the Bar has been increased to a bottle to each of the said two tables at dinner only, which allowance has been accepted by the Ancients and Barristers respectively at their own request in full of the allowance of such glasses at dinner and supper as aforesaid, yet the Bench taking notice of late that the Ancients and Bar do frequently send up to desire of the Bench bottles of wine at their pleasure and discretion, a practice never used till lately and always unwarrantable . . . it is therefore ordered that from henceforth no wine be sent to the Ancients or Bar, unless upon Grand Days, upon any request from thence but one bottle to the Ancients and one to the Bar, unless the Benchers present do so without being asked."

June 24.—In 1738 Gray's Inn was preparing to rebuild the south side of Holborn Court. On 24th June it was decided to treat for the purchase of an old house behind it for demolition and also of a shed behind No. 1 for the same purpose.

June 25.—On 25th June, 1772, the Gray's Inn Benchers "having received information that some members have let their chambers to a house-broker who has let the same ready furnished to persons not members of this Society and being determined to put a stop to a method which must be productive of great scandal and disgrace to this Society . . . ordered that no member of this Society who hath let his chambers in manner aforesaid shall be permitted to renew the same unless he shall vacate any agreement he may (it is hoped inadvertently) have made with such broker." It was also ordered that an "iron rail and stone kerb" should replace the "boarded fence" enclosing the Society's ground adjoining the buildings in Gray's Inn Lane.

June 26.—On 26th June, 1683, the Inner Temple Benchers ordered: "Whereas the buildings called Paper Buildings . . . become ruinous and in decay and not suitable to or complying with the uniformity and beauty of the rest of the buildings . . . Several proposals have been received from and made to the present proprietors and owners of the respective chambers in the said Paper Buildings by the Masters of the Bench . . . for the rebuilding the same, but with little or no success by reason of the particular and private advantages demanded and insisted upon by the said proprietors . . . which this House could not agree

to without very apparent great loss and prejudice to the public interest . . . of the Society . . . it is therefore ordered that the said Paper Buildings shall be rebuilt at the charge of the House when the said respective chambers . . . shall come into the power of the House." The rebuilding took place two years later.

June 27.—On 27th June, 1785, the Gray's Inn Benchers determined to let the Gray's Inn Coffee House east of the Holborn Gate to Jonathan Lowe at a rent of £200 a year. The chambers over the gate were included in the letting. Further, Mr. Walker was ordered to keep his dog out of the gardens.

June 28.—Thomas Crispe was a Victorian Queen's Counsel. Here is a passage from his reminiscences: " My first appearance in public was as a rider in a booth. I was five years old . . . It was the Coronation Day of Queen Victoria, 1838 (28th June) . . . My uncle took me to the great fair in Hyde Park . . . and there introduced me to the Hottentot Venus . . . From the Hottentot point of view the beauty of the dusky goddess consisted in an abnormal development and a strength which enabled her to carry a drayman . . . without inconvenience. On this steed of Africa I . . . was placed astraddle and holding to a girdle . . . the almost sole article of her apparel, I plied a toy whip on the flanks of my beautiful jade, who, screaming with laughter, raced me round the circle."

June 29.—On 29th June, 1677, the Middle Temple Benchers decided that in the rebuilding which was then proceeding the chambers on the west side of Essex Court should be extended 7 feet further west into New Court.

HARRY THAW

A film critic thought he recognised in some of the episodes of the French production " La Loi du Nord " some echoes of the story of Harry Thaw whose trial in 1907 rocked the United States and fascinated the rest of the world; he died early this year. Briefly, the background of the case was this: on 26th June, 1906, Stanford White, one of the most fashionable architects in the United States, was sitting in the Madison Square Roof Gardens in New York. The building was one of his early successes. The occasion was the first performance of a new show, " Mam'zelle Champagne," and at the small tables facing the stage the after-dinner audience was watching the performance. At one of them was a party consisting of Harry Thaw, " play-boy " son of a railway millionaire, his beautiful young wife, formerly a minor musical comedy actress and an artists' model, and two of their friends. In the course of the show they rose to leave, but Thaw fell behind, and as he came to White he fired three revolver shots into him killing him instantaneously. He was, of course, arrested immediately and there began a legal battle for his life or his liberty waged with all the tenacity which the determined character of his widowed mother could exert, conscious of the resources of a family fortune of $40,000,000. The very abundance of legal talent which such a backing could command provided the first difficulty in the path of the defence, divided counsels among the defenders. Family considerations also hampered their strategy. In the end the best hope for Thaw proved to be that of establishing that he had been insane for a considerable period before the killing, but at first his mother would not hear of it. Temporary insanity was the next best refuge, but again she was unwilling to let it be revealed in court that there had been cases of epilepsy and madness in the family.

A LONG FIGHT

The majority of Thaw's lawyers were for this defence of insanity, though one of them, Mr. Delphin M. Delmas (" the silver-tongued spell-binder of the Pacific Coast "), had contended strongly for reliance on " the unwritten law." White, it was alleged, had drugged and outraged Thaw's young wife. But the other lawyers pointed out that this would not hold water since the incident, if it occurred, had happened four years before the murder and a considerable time before the marriage. Mr. William Jerome, the District Attorney for New York, a fearless crusader against corruption, threw himself into the prosecution with a zeal inspired by the conviction that this was a struggle between justice and the Thaw millions. It took eight days to select the jury and the trial proper began on 4th February, 1907. It dragged on for eleven weeks and four days of sensational revelations and allegations of the most elaborate depravity in the lives both of Thaw and of White. In the end the jury disagreed, confused perhaps by the fact that Delmas in his final speech had run off in an attempt to snatch a victory by virtue of " the unwritten law." A second trial began on 6th January, 1908, and was far shorter than the first. Before the month was out the jury found Thaw not guilty, on the ground of insanity, and he was ordered to an asylum. The fight for his liberation lasted seven years and in the end the Thaw millions won. He escaped to Canada in 1913; he was handed over to the United States authorities. In 1915 the question of his mental condition was the subject of another trial; the jury found he was now sane and he was released.

COUNTY COURT LETTER

Decisions under the Workmen's Compensation Acts

Fatal Accident to Lorry Driver

IN *Mountcastle* v. *Wright*, at Lincoln County Court, the applicant's case was that her late husband had been fatally injured while trying to start one of the respondent's lorries on a slope. The deceased was crushed between two lorries. He had permission to take the lorry home with him. The respondent's case was that the deceased had not started his day's work when the accident occurred, and he was not acting in the course of his duties at the time. His Honour Judge Shove held that the permission to take the lorry home at nights implied that the deceased, at the time of the accident, was engaged on the respondent's business. An award was made of £517 with costs. A stay of execution was granted, as the respondent's insurance company was disputing liability on the policy, and he required time to pay.

Miner's Nystagmus

IN *Walsall Wood Colliery Co., Ltd.* v. *Riley*, at Walsall County Court, the application was for a termination of an award of 30s. a week, plus supplementary allowances. The medical evidence for the applicants was that on the 14th June and on the 28th November there was no sign of nystagmus. The respondent showed psychological symptoms, which arose partly from a sense of grievance, owing to an accident in which his foot was crushed. He had also said that he was working in low tunnels for eight hours a day. The respondent's medical evidence was that he still had a rapid pulse, with vertigo on bending. He was unfit for hard work underground, but might do labouring work on the surface. His Honour Judge Whitmee observed that the respondent was unwilling to resume work in the pit, for which he was not to blame. He was not now suffering from nystagmus, and an award was made in favour of the applicants, terminating the compensation.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Loss of Unstamped Deed of Conveyance—ACTION TO BE TAKEN

Q. A conveyance of Blackacre is prepared and executed by the vendor and purchaser and passed under the seal of the mortgagee building society, but is then lost by the solicitor acting in the matter before it has been stamped. The purchase and repayment of mortgage money, etc., have been completed. There is also a mortgage by the purchaser to another building society which is in hand but unstamped. The time for stamping the lost deed and the mortgage expires in six days. What course do you advise? It appears to us that the legal estate has passed to the purchaser and Blackacre is charged with the repayment of the mortgage money to the last-mentioned building society, and that it would not be proper to re-engross and re-execute, etc., the conveyance, nor would a deed of confirmation rectify the matter of the lost deed being unstamped.

A. We suggest that evidence to prove the loss should be obtained (e.g., a suitable statutory declaration), and that the declaration should prove the contents (e.g., a copy exhibited) of the deed, and the fact that it was not stamped. The appropriate stamp duty should then be impressed upon a copy which could be produced in evidence. See Alpe's " Law of Stamp Duties," 21st ed., pp. 41 and 42, citing *London and County Banking Corporation* v. *Ratcliffe* (1881), 6 App. Cas. 722 (stamped copy of an unstamped and destroyed original admitted in evidence).

Mr. W. Bonham-Carter, solicitor, of Porchester Terrace, W., left £71,293.

REVIEWS

Hayward and Wright's Office of Magistrate. By J. WHITESIDE, Solicitor, Clerk to the Exeter Justices. Seventh Edition. 1946. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 15s. net.

This work is a little more ambitious than the average small guide to the work of the magistrate's court. It seeks to combine a measure of comprehensiveness with the attractiveness that the more comprehensive manuals lack. The fact that this is its seventh edition is some indication of its success. It provides justices with a readable and instructive survey which can also be used for quick reference. The text has been completely revised and in some places rewritten. It is useful for all connected with the magistrates' courts and, as the present editor suggests, it would not be out of place in the reporters' room of most provincial newspapers.

A Guide to Juvenile Court Law. By G. H. F. MUMFORD, Solicitor, Clerk to the Justices, Gravesend. Second Edition. 1947. London: Jordan & Sons, Ltd. 5s. net.

Since the first publication of this work in 1944 it has been reprinted twice. Its wide success has resulted in this early second edition. The scheme of the first edition has been maintained, but, in view of the repeal of the Education Act of 1921, it has been necessary to insert those sections of the Education Acts, 1944 and 1946, which affect juvenile courts, in place of the chapter on "School Attendance." Additional information is included in many other chapters and the new "Age Table" on the end-papers illustrates, at a glance, some of the more important points of procedure. The reviewer, in his small experience of the juvenile courts, found the first edition of this work indispensable. He has no doubt that it should be in constant use by all who do the work of these courts.

Justice of the Peace. New Edition. By LEO PAGE, of the Inner Temple and South Eastern Circuit, Barrister-at-Law. With a Foreword by The Right Hon. LORD ROCHE, Lord of Appeal. 1947. London: Faber & Faber, Ltd. 10s. 6d. net.

The second edition of this famous book, published sixteen years after the first edition, is a welcome event. Knowledge, wisdom and ripe experience are here for the magistrate, whether in his novitiate or his maturity, to garner. Illustrations are, like Milton's audience, fit though few. One which will appeal to solicitors is the remarkable extract culled from a recent newspaper, of a report of a successful defendant's unsuccessful application, through his solicitor, for costs. The display of ignorance by both the bench and their clerk was clear on the face of it, as the clerk told the solicitor to sit down because he was "criticising a decision of the bench," and the bench, having heard the superintendent of police say that the costs would come out of their own pockets, declined to make an order. The author does not criticise the decision in itself but uses the comments to illustrate the background of ignorance behind it. "The test whether a defendant should be awarded costs should be whether, in the opinion of the bench, there was so little evidence against the accused that the case should not have been brought. In all such cases they should sympathetically consider any application for costs." This is the way to teach law to magistrates, and the author does so comprehensively and unobtrusively in this treatise. It is published at an opportune time, during the sittings of the Royal Commission on Justices of the Peace.

WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON

The annual general meeting of this Company was held at Tallow Chandlers' Hall on the 18th June, with the retiring master, Mr. W. Arthur Bright, in the chair. Moving the adoption of the report of the Court of Assistants, he said that the past year had shown a very satisfactory increase in the membership, particularly amongst those who had taken up the livery. This increase might be attributed to three reasons in equal degree: the efforts made by the members to induce their friends to join the company, the skilled propaganda originated by Mr. Arnold F. Steele, its clerk, and the kindly interest which the legal press had taken in its various activities. Application was being made to the Court of Aldermen for an increase in the number of the livery (now 250). Among several members of the company who had received honours during the year, the master especially congratulated Sir Douglas T. Garrett, the President of The Law Society, and the company's honorary solicitor, on his knighthood, and Mr. Anthony Pickford on his appointment as town clerk of the City. Two court dinners to which members of the company had been invited as guests had been held. The court had decided to hold three of these dinners during a year, so that it would not take very long for every liveryman in his turn to receive an invitation. These dinners were not paid for out of the company's funds but by the members of the court. The second livery banquet had been held at the Mansion House by kind permission of the Lord Mayor on the 20th March, and the master had received a personal letter from his lordship thanking the company for their hospitality. The question whether the company could continue to provide an annual banquet without payment by the members for their dinners apart from their guests was being anxiously considered by the court. The annual service at St. Stephen's, Walbrook, had been well attended, and the company were grateful to Canon Gillingham for his fine address on real peace.

All solicitors, continued the master, must for many years past have felt oppressed by the cloud which hung over the profession owing to the recurrent publicity given to cases of defalcation. At last a compensation fund had been instituted and the examination of solicitors' accounts by an independent accountant had been brought into force. As a profession they could now hold their heads high and face the public with the knowledge that they had done all that was humanly possible to protect it and to comply with the requirements of Parliament, which had made it quite clear that the solicitors should put their own house in order. Compulsory membership of The Law Society had been discussed recently at a meeting of the council of the society and of the presidents and secretaries of the provincial law societies, which the master and the clerk had attended as representatives of the company. At the date of the meeting, out of a total number of 14,911 practising solicitors, 11,484 were members of the society and 3,427 were not. The meeting had seemed to agree that unanimity throughout the profession was essential; it was most important in the establishment of the solicitor's right as a profession to decide what its members should charge for the work which they had to do. If they went to the authorities who controlled their remuneration, they would be in a much stronger position if The Law Society represented, say, 90 or 95 per cent. of all the practising solicitors in the country. He urged all members of the company who were still not members of The Law Society to join it as soon as they conveniently could.

Among the spate of Government legislation the Bill which probably interested City solicitors most was the Companies Bill, which was largely founded on the Cohen Report. The most controversial proposal, that relating to nominee shareholders, had now been dropped. The master said he had personally been in favour of disclosure to the public of the beneficial owners of shares, on the ground that the public were entitled to know who were controlling a company in which they might be interested as shareholders or creditors. The Government, however, had apparently decided to rely on the provisions of cl. 38, under which the Board of Trade might appoint inspectors to investigate the membership of "any" company for the purpose of determining the persons who were or had been financially interested in it or able to control or influence its policy. A subsection provided that the Board of Trade should not be bound to publish any report by an inspector unless it thought fit. The Cohen Committee had suggested a similar clause, with the important difference that the report should be forwarded to the company concerned. The master expressed curiosity about the exact intention of the Government's clause, with its implication of secrecy, and complained that it left a nasty taste in his mouth.

The new master, Mr. A. P. Whatley, and the new senior and junior wardens, Mr. H. N. Smart, J.P., and Mr. R. T. Outen, were duly installed.

OBITUARY

MR. A. CLARKE

The death has taken place in Dublin of Mr. Archibald Clarke, solicitor. He was one of the city's best known figures. He was aged seventy-eight and had completed fifty years in the legal profession.

MR. A. M. DUNNE, K.C.

Mr. Arthur Mountjoy Dunne, K.C., who for many years enjoyed one of the leading practices in Indian Appeals before the Judicial Committee of the Privy Council, died on 18th June. Born in 1859, he was called by the Middle Temple in 1881 and took silk in 1917. He was made a Bencher in 1925, and was an additional member of the General Council of the Bar. For some years he was second chairman of the Wiltshire Quarter Sessions. His son, Mr. L. R. Dunne, is a magistrate at Bow Street.

NOTES OF CASES

HOUSE OF LORDS

Newport Corporation *v.* **Monmouth County Council; Monmouth County Council** *v.* **Newport Corporation**

Lord Simon, Lord Wright, Lord Simonds, Lord du Parcq and Lord Normand. 16th May, 1947

Local government—County borough—Extension—Financial adjustment between borough and county—General Exchequer grant—How taken into account—Sum due on adjustment—Right to interest—Local Government Act, 1929 (19 & 20 *Geo.* 5, *c.* 17)—*Local Government Act*, 1933 (23 & 24 *Geo.* 5, *c.* 51), *s.* 152 (1) (*b*), *Sched. V, r.* 1—*Newport Extension Act*, 1934 (24 & 25 *Geo.* 5, *c.* lxvii), *ss.* 4, 58.

Appeal from a decision of the Court of Appeal affirming on different grounds a decision of Atkinson, J.

By s. 4 of the Newport Extension Act, 1934, the area of the county borough of Newport was extended, and by s. 58 (1) financial adjustments consequent on the Act were to be made between the local authorities affected, in accordance with ss. 151 and 152 of the Local Government Act, 1933. By s. 152 (1) (*b*) of the Act of 1933, " Provision shall . . . be made for the payment to a local authority " of a sum found to be equitable " in respect of any increase of burden which, as a consequence of any alteration of boundaries . . . will properly be thrown on the ratepayers . . . in meeting the cost incurred by that local authority in the discharge of any of their functions." By r. 1 of the rules in Sched. V to the same Act, laid down for determining what constitutes the equitable sum in question, " Regard shall be had " to the increased burden referred to in s. 152 (1) (*b*), " Provided that no alteration of income in consequence of an apportionment under . . . s. 108 (1) (*b*) of the Local Government Act, 1929, shall be taken into account." By s. 86 of the Act of 1929 provision is made for the " General Exchequer Contribution," which is an annual contribution by Parliament towards the expenses of local government in counties and county boroughs. By s. 88, the contribution is to be apportioned in a specified way among the several counties and county boroughs. Section 89 provides that a sum shall be set aside out of the sum apportioned to a county under s. 88 for the payment of prescribed amounts to district councils. The residue retained by the county council for its own expenses is called the " General Exchequer Grant." By s. 105 the General Exchequer Grant is applicable by the county council to " general county purposes," which s. 180 (1) (*a*) of the Act of 1933 defines as " purposes for expenditure on which the whole of the county is chargeable. . . ." The county borough of Newport having been extended under the Act of 1934, with a corresponding reduction in the area of the County of Monmouth, a financial adjustment as provided for became necessary between the county council and Newport Corporation. A dispute having arisen (*a*) as to the manner in which the General Exchequer Grant to the county should be taken into account in the adjustment, and (*b*) as to whether the county council were entitled to interest on the sum payable to them on the adjustment for the period between severance of the area from the county and the date of ascertainment of the sum due, the matter went before an arbitrator, who stated a case for the opinion of the court. Atkinson, J., decided the first question in favour of the county council and the second in favour of the corporation. The Court of Appeal affirmed that decision (on the first point on different grounds). The corporation now appealed on the first point and the county council cross-appealed on the question of interest. The House took time for consideration.

The House (LORDS SIMON, DU PARCQ and NORMAND; LORDS WRIGHT and SIMONDS dissenting) held, on the appeal, that the financial adjustment must not be made on the basis that the full amount of the General Exchequer Grant would be continued to be paid to the county as reduced by the severance, since it was not the fact that after the change of boundary the county council would continue to receive the same General Exchequer Grant as before. Lords du Parcq and Normand observed that the negative provision in the proviso to r. 1 of Sched. V to the Act of 1933 was not, on its true construction, to be taken as implying a positive direction to the arbitrator to take account of the pre-severance income of the county council, including the General Exchequer Grant, as if it were to be received unaltered in amount after the severance.

LORD SIMON, in the course of his speech, said that, for the purposes of the calculation in question, the right deduction to be made from the expenses of the county as reduced was not necessarily the proportion of the previous General Exchequer Grant which corresponded to the reduction in rateable value, and the arbitrator would not be exceeding his discretion if he were influenced in suitable cases by comparisons of population or of area.

LORD WRIGHT said that the words " burden . . . on the ratepayers " in s. 152 (1) (*b*) of the Act of 1933 should be construed as meaning the rate-borne burden limited to so much of that burden falling on the ratepayers as was incurred in executing their functions. So far as that cost was borne by the General Exchequer Grant, it was not incurred by the ratepayers, and might well be left out of account. To leave it out of account would show the difference in the rate-borne burden consequent on the alteration of boundaries.

LORD DU PARCQ said that the General Exchequer Grant was, of course, the income of the county, but that its relevance to the calculation was that it reduced the burden on the ratepayers.

LORD NORMAND said that the arbitrator's mandate under s. 152 (1) (*b*) of, and Sched. V to, the Act of 1933 required him to find the difference between the burden on the ratepayers in the reduced area in the post-severance period and the burden which they would have borne in the same period if there had been no severance. In doing that, he was not to assume any figure for post-severance General Exchequer Grant. It would be erroneous for the arbitrator to take into account the fact that, some two years after severance, a new General Exchequer Grant would be assigned to the county at the beginning of a new fixed grant period.

The House held, on the cross-appeal, that no interest was awardable to the county council on the sum payable to them as a result of the adjustment. The appeal and cross-appeal were accordingly dismissed.

COUNSEL: *Willink*, K.C., *Maurice FitzGerald*, K.C., and *Rimmer; Sir Walter Monckton*, K.C., *Simes*, K.C., and *Harold Williams*.

SOLICITORS: *Rees & Frères*, for *T. Mervyn Jones*, Newport; *Torr & Co.*, for *Vernon Lawrence*, Newport.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

Routh *v.* **Jones**

Lord Greene, M.R., Cohen and Wrottesley, L.JJ. 18th April, 1947

Restraint of trade—Medical practitioners—Width of restrictive covenants—Onus of proof.

Appeal from a decision of Evershed, J.

The plaintiffs were two medical men engaged in practice at Okehampton. In a written agreement, dated 31st December, 1943, they engaged the defendant as their assistant. The agreement, after reciting that the plaintiffs " are now engaged in general medical practice . . . at Okehampton . . . " provided by cl. 12 that " the assistant agrees . . . that he will not during this contract of service save in the employ of the principals nor within the space of five years thereafter, practise or cause or assist any other person to practise in any department of medicine surgery or midwifery nor accept nor fill any professional appointment whether whole-time or otherwise whether paid by fees . . . or whether honorary within a radius of 10 miles from 11 East Street, Okehampton." The agreement further provided for payments of liquidated damages in the event of breaches being committed. The employment was terminated, and the defendant later decided to set up in general medical practice at Okehampton. The plaintiffs issued a writ and served notice of motion for interlocutory relief, and at the hearing of the motion before Evershed, J., it was treated as the trial of the action. Evershed, J., decided that the covenant was severable into two branches, one against practising (etc.) medicine and the other against accepting a professional appointment, but that each branch was wider than was reasonable or necessary for the protection of the plaintiffs' interests, and he dismissed the action. The plaintiffs appealed.

LORD GREENE, M.R., said that, in the view which he took of the case, it was unnecessary to decide the question of severability. On a true construction of the covenant the provisions against practising and those against accepting professional appointments were both restricted by the time and space limits specified. Medical practitioners were entitled to protect themselves against the competition of assistants who acquire " intimacies and knowledge " of their patients (*Fitch* v. *Dewas* [1921] 2 A.C. 164). Here the plaintiffs were general medical practitioners, but the covenant was not confined to a prohibition against " general medical practice," and was wide enough to shut out the defendant from practice of any sort of medicine. There was no evidence of what that phrase comprised, but it certainly did not include practice as a consultant. If the defendant set up as a consultant in the prohibited district no harm could be done to the plaintiffs'

general practice. The first branch of the covenant was too wide. The second branch, prohibiting the acceptance of a professional appointment, was also too wide. It would prevent the defendant from accepting, after the termination of his employment with the plaintiffs, the position of medical officer of health, an appointment which could not prejudice the plaintiffs' interests. There had been a certain difference of judicial opinion as to onus of proof. *Fitch* v. *Dewas* [1921] 2 A.C. 162, indicated that it was for a covenantor to prove that the agreement was bad. On the other hand, it was said in *Herbert Morris, Ltd.* v. *Savelby* [1916] 1 A.C. 706, and *Attwood* v. *Lamont* [1920] 3 K.B. 587, that it was for the covenantee to prove that the agreement was good. He preferred the latter view. The appeal failed.

COHEN and WROTTESLEY, L.JJ., gave judgments agreeing.

COUNSEL: *Montgomery White*, K.C., and *Dickens*; *Salt*, K.C., and *Lindner*.

SOLICITORS: *Hempsons*; *Biddle, Thorne, Welsford & Barnes*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE NOTE

22nd May, 1947

LORD GREENE, M.R., announced that a new direction had been issued to the effect that, where it was known or believed that the respondent to an appeal was appearing in person, the solicitors for the appellant must give him reasonable notice of the date when they thought that the appeal would be heard. Otherwise, when the case came on, the respondent, who had no means of finding out, might not turn up, and that meant delay.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re Merchant Navy Supply Association, Ltd.

Vaisey, J. 28th April, 1947

Company—Winding up—No distribution of profits to be made to members—No provision for distribution of surplus assets on winding up—Claim by Crown to surplus assets as bona vacantia—Rights of contributories—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 247.

Adjourned summons.

The company was incorporated in 1942 as a private company with a capital of £1,250, divided into fifty shares of £25 each. The memorandum of association provided that the company was to create and maintain an organisation to ascertain the material requirements of vessels and to foster by any means the provision of such requirements, particularly by making such requirements known to the Government. A further object of the company was to purchase and deal in materials necessary for the provision of such requirements. By cl. 4 of the memorandum, it was provided that "the income and property of the company whencesoever derived shall be applicable solely towards the promotion of the objects of the company as set forth in this memorandum of association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to members of the company: Provided that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the company . . . ." No provision was contained in the memorandum regarding the distribution of surplus assets on a winding up. Ten shares had been issued, five to directors of shipping companies and five to directors of companies dealing in ships' stores. In carrying on its business the company's method was to ascertain the goods required by shipping firms and to order the goods on behalf of such firms, receiving as remuneration a small commission, which was calculated to be sufficient merely to cover the working expenses of the company. Substantial transactions of the order of £2,000,000 were carried out. No remuneration had ever been paid to the directors. The company had gone into liquidation, and it was estimated that there would be a surplus of £3,500 after the realisation of all the assets and the discharge of all the liabilities. The liquidator took out this summons to ascertain whether such surplus ought to be distributed to the members according to their rights and interests, or whether such surplus, after paying to the members the amount paid up on their shares, was *bona vacantia*. By s. 247 of the Companies Act, 1929: "Subject to the provision of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company."

VAISEY, J., said that the prohibition contained in cl. 4 of the memorandum was directed against the payment or transfer by way of profit of the income or property of the company to its members. Two questions arose. In the first place, were the words limited to profits earned by the company while a going concern? Secondly, if not, was the purely negative provision sufficient to exclude the express terms of s. 247 of the Act of 1929, which provides that in a winding up, after the satisfaction of liabilities, the property should be divided among the members according to their rights and interests unless the articles should otherwise provide? In his view, the restrictive clause related to the profits of the company while carrying on business as a going concern, and if it were to be extended to the profit or enhanced value distributable to shareholders in a winding up, it would be inoperative as attempting to exclude express statutory provisions without providing an alternative. The provisions of s. 247 must prevail, and a declaration would be made that the surplus assets ought to be distributed among the members of the company according to their rights and interests therein.

COUNSEL: *Hillaby*; *Christie*, K.C., and *Strangman*; *Danckwerts*.

SOLICITORS: *Edward & Childs*; *Coldham, Birkett & Fleuret*; *Treasury Solicitor*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

[DIVISIONAL COURT]

Carr *v.* Decca Gramophone Co., Ltd.

Lord Goddard, C.J., Atkinson and Oliver, JJ.

12th May, 1947

Factory — Improper adjustment of woodworking machine — Adjustment delegated to employee—Employer charged with contravening regulation—Defence procedure—No finding by justices of reasonable steps to prevent contravention—Factories Act, 1937 (1 *Edw.* 8 & 1 *Geo.* 6, *c.* 67), *ss.* 130 (1), (2), 137 (1).

Case stated by the Metropolitan Magistrate sitting at Lambeth Police Court.

A woodworking machine in a factory was being operated while not properly or securely fenced, contrary to reg. 10 (*b*) (ii) and (*c*) of the Woodworking Machinery Special Regulations, 1922–45, made under the Factories Act, 1937. The faulty adjustment of the guard which caused the defective fencing was not due to the nature of the work being done. The employee operating the machine had only been in the employ of the occupiers for five days, had many years' experience as a sawyer, and told the respondent occupiers that he knew the regulations. He was competent to work and reset the machine without instructions, and in fact the occupiers never gave him any instruction or supervised his adjustment of the machine. The occupiers having been charged with contravening s. 130 (1) of the Act of 1937, the magistrate held that, as they had delegated their duty under reg. 10 to the operator whom they knew to be experienced, and as the machine was capable of proper adjustment, they were guilty of no offence. The prosecutor appealed. By s. 130 (1) of the Act of 1937, it is an offence on the part of the owner or the occupier of a factory if, in relation to a factory, any contravention occurs of the Act or of regulations made under it. By s. 130 (2): "In the event of a contravention by an employed person of . . . this Act with respect to duties of persons employed or of . . . any regulation . . . made under this Act which expressly imposes any duty upon him, that person shall be guilty of an offence and the occupier or owner . . . shall not be guilty of an offence in respect of the contravention unless it is proved that he failed to take all reasonable steps to prevent the contravention." By s. 137 (1): "Where the occupier or owner of a factory is charged with an offence under this Act, he shall be entitled, upon information duly laid by him . . . to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if . . . the occupier or owner . . . proves . . . (*a*) that he has used all due diligence to enforce the execution of this Act . . . or any regulation made thereunder; and (*b*) that the said other person had committed the offence . . . without his consent, connivance, or wilful default, that other person shall be summarily convicted of the offence . . ." (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that it was not necessary for the occupiers, before they could set up the defence provided by s. 130 (2), first to observe the procedure prescribed by s. 137 (1). Section 137 was concerned not with employed persons guilty of contravening the Act, but with contraventions by other persons, for example, workmen employed by a contractor executing work at the factory. The two sections were further separate and distinct in that the onus was, in the former, on the prosecution, and only in the latter on the occupier or owner of the factory. The occupiers accordingly

had a defence under s. 130 (2), unless, however, they were proved to have failed to take all reasonable steps to prevent the contravention. The magistrate had failed to make any specific finding on that matter. The case must therefore be remitted to him with a direction that he should state whether he was satisfied that the occupiers did in fact take all reasonable steps to prevent the contravention.

COUNSEL: *Arthian Davies; T. F. Southall.*

SOLICITORS: *The Solicitor, Ministry of Labour and National Service; Rowe & Maw.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dorrington *v.* London Passenger Transport Board

Hilbery, J. 22nd May, 1947

Master and servant—Common employment—Omnibus conductress off duty at terminus—Injury through negligent management of omnibus by fellow employee.

Action tried by Hilbery, J.

On the 27th July, 1945, the omnibus, belonging to the defendant board, of which the plaintiff was the conductress, completed a journey at a terminus situated on land belonging to the board. The plaintiff, having handed her surplus money to the driver of her omnibus, had then completed her duties for the time being and was free to go where she liked until the time arrived for her to resume duty. In fact she remained in conversation with the driver near the front of the omnibus, and, while she was doing so, was seriously injured by the negligent management of another omnibus belonging to the board. She accordingly sued the board for damages.

HILBERY, J., said that the driver's mismanagement of his omnibus was impossible to excuse. The board's only answer to the plaintiff's claim was that it was barred by the highly artificial and now unfashionable legal fiction known as the doctrine of common employment. The authorities showed that, for that doctrine to apply, it was necessary that, at the time of the injury, the two servants should have been engaged in a common work in the sense that the work of the one was so related to the work of the other that the risk of injury to the one, due to the carelessness of the other, was not merely fortuitous, but was a special risk involved in the relationship itself, so that such a risk must be deemed to have been in contemplation of the injured servant when he entered into his contract of service. The plaintiff at the time of the accident was not doing her work, or anything which was a necessary consequence of, or incidental to, it. Having finished her work for the time being she was not required by it to be where she was or then to take the risk of the negligent driving of another of the board's omnibuses. True, her work had brought her to the locality, but it would be illogical to say that it caused her to stand there. She was entitled to succeed. There would be judgment in her favour for £670.

COUNSEL: *Bernard Lewis; Paull*, K.C., and *John Harington* (*Anningson* with them).

SOLICITORS: *Pattinson & Brewer; A. H. Grainger.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Kirk *v.* Kirk

Lord Merriman, P., and Jones, J.

30th April, 1947

Husband and wife—Maintenance order against husband domiciled in Scotland—Wife's decree of divorce in Court of Session—Termination of maintenance order.

The Divisional Court allowed this appeal from a decision of Great Yarmouth Justices.

On 3rd September, 1929, the justices made a maintenance order in favour of the respondent wife on the ground of the appellant husband's wilful neglect to maintain her. The husband was domiciled in Scotland. On 20th March, 1946, the wife obtained a decree of divorce against him in the Court of Session. In January, 1947, the husband applied to the justices for revocation of the order of 3rd September, 1929, contending that it ought not to be continued in view of the divorce. According to Scots law, as ascertained by the Divisional Court from the Court of Session, the effect of the divorce on the wife as the innocent party was to give her the legal rights to which she would have been entitled if her husband had died at the date of the decree, but to put an end from that date to any award of alimony. The justices refused to revoke the order of September, 1929, but reduced the amount payable. The husband appealed.

Held, that the justices ought to have exercised their discretion by terminating the order of September, 1929, since the wife had available to her in the courts of Scotland rights differing in essence from the relief to which she was entitled under the order, and since it was in any event doubtful, in view of *M'Queen* v. *M'Queen* [1920], Sc. L.T. 405, whether the order was enforceable in Scotland.

The court did not find it necessary to decide, on the one hand, positively, whether there were any circumstances in which justices had jurisdiction, in the case of a foreign (which included a Scottish) divorce, to keep an earlier maintenance order alive, or, on the other hand, negatively, that there could never be jurisdiction to keep such an order alive in those circumstances, for which proposition *Mezger* v. *Mezger* [1937] P. 19 was not an authority.

COUNSEL: *Jukes;* the respondent was not represented.

SOLICITORS: *Bartlett & Gregory*, for *Lucas & Wyllys*, Great Yarmouth.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 1171. **Death Duties.** Relief against Double Duty. Order in Council applying s. 20 of the Finance Act, 1894, to Basutoland. June 11.

No. 1172. Death Duties, Northern Ireland. Relief against Double Duty. Order in Council applying s. 20 of the Finance Act, 1894, as in force in Northern Ireland, to Basutoland. June 11.

No. 1174. **Diseases of Animals** Act, 1935 (Extension of Definition of "Poultry" and "Disease") Order. May 2.

No. 1170. **Maintenance of Dependants.** Order in Council extending the Maintenance Orders (Facilities for Enforcement) Act, 1920 (10 & 11 Geo. 5, c. 33), to Alberta. June 11.

No. 1143. **Pensions Appeal Tribunals** Act (Modification) Order. June 11.

No. 1181. **Regulation of Disposal of Stocks** (Amendment) (No. 3) Licence. June 16.

No. 1138. **Regulation of Payments** (General) (No. 2) Order. June 11.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

FIRE SERVICES BILL [H.C.] [16th June.

LONDON AND NORTH EASTERN RAILWAY BILL [H.C.] [12th June.

Read Second Time:—

INDUSTRIAL ORGANISATION BILL [H.C.] [18th June.

LONDON MIDLAND AND SCOTTISH RAILWAY BILL [H.C.] [19th June.

NOTTINGHAM CORPORATION BILL [H.C.] [19th June.

NOTTINGHAMSHIRE AND DERBYSHIRE TRACTION BILL [H.C.] [16th June.

Read Third Time:—

NAZEING WOOD OR PARK BILL [H.L.] [17th June.

SOUTHEND-ON-SEA CORPORATION BILL [H.L.] [17th June.

WELLINGTON MUSEUM BILL [H.L.] [17th June.

In Committee:—

NATIONAL SERVICE BILL [H.C.] [18th June.

TRANSPORT BILL [H.C.] [19th June.

HOUSE OF COMMONS

Read Second Time:—

AGRICULTURE (EMERGENCY PAYMENTS) BILL [H.C.] [20th June.

CITY OF LONDON (TITHES) BILL [H.L.] [17th June.

PROBATION OFFICERS (SUPERANNUATION) BILL [H.C.] [18th June.

SOUTH-WEST MIDDLESEX CREMATORIUM BILL [H.L.] [17th June.

WEAR NAVIGATION AND SUNDERLAND DOCK BILL [H.L.] [17th June.

Read Third Time:—

KINGSTON-UPON-HULL PROVISIONAL ORDER BILL [H.C.] [19th June.

MARRIAGES PROVISIONAL ORDERS BILL [H.C.] [19th June.

PENICILLIN BILL [H.L.] [18th June.

PUBLIC OFFICES (SITE) BILL [H.C.] [19th June.

SOUTHERN RAILWAY BILL [H.L.] [17th June.

In Committee:—

FINANCE BILL [H.C.] [17th June.

QUESTIONS TO MINISTERS

British Subjects' Property

Mr. Collins asked the Secretary of State for Foreign Affairs when British subjects, whose property in enemy countries has been located and identified, and where the ownership is not in doubt or dispute, may hope to receive a settlement of their claims.

Mr. Mayhew: No claims of any nature in respect of Germany are yet being considered and it is not possible at present to say when they will be. Meanwhile statements of ownership and indebtedness have been accepted for record. [16th June.

War Damage Value Payments (Forms)

Lieut.-Colonel Dower asked the Chancellor of the Exchequer if he is aware that no address is printed on the forms issued by the War Damage Commission giving notice of value-payment declaration which claimants are required to sign and return; and if he will alter this.

Mr. Dalton: A letter with the address of the Commissioner's regional office is issued with the "share" form to one of the owners entitled to share in a value payment. All other known owners are separately advised, on a form which also bears the address of the regional office. [17th June.

Mental Deficiency

Mr. George Wallace asked the Minister of Health if he will review, with a view to early amendment, the regulations regarding the certification of the insane.

Mr. Bevan: As soon as opportunity permits, it is intended to undertake a re-statement of the law relating to mental treatment. [19th June.

Occupying Leaseholders (Protection)

Mr. Janner asked the Minister of Health whether he will take steps at an early date to introduce legislation to protect occupying leaseholders whose building leases, after having been in operation for many years, are terminating, from being ejected from their homes in the premises concerned; if, in the meanwhile, he will direct the appropriate authorities to requisition the respective premises for the leaseholders on the termination of the leases, in view of the large number of homes involved; and whether he will instruct the authorities to publicise widely their powers in this regard.

Mr. Bevan: The Government are considering the general question of leasehold property but I can hold out no prospect of early legislation in the matter. While I do not feel that I could properly give a general authority to requisition premises for the protection of leaseholders, I should be prepared to consider applications from local authorities for such powers in any particular cases of hardship.

Mr. Janner: Would my right hon. friend circulate particulars of requisitioning powers to local authorities in consequence of the fact that there are so many thousands, possibly hundreds of thousands of houses, the leases of which are falling in, and in respect of which there is no protection under the Rent Acts for the tenants?

Mr. Bevan: It would be entirely improper to use the powers of requisitioning unless it can be shown that there are cases of hardship. It would be trying to get round the statute and I could not conceivably use such a method. It is for Parliament to legislate if it wants to alter the law, not for Ministers to circumvent the law.

Mr. James Callaghan: While understanding that my right hon. friend cannot introduce legislation because the Session is nearly over, will he keep his mind open for next session?

Mr. Bevan: My mind is always open. [19th June.

Matrimonial Causes (Denning Report)

Mr. E. Roberts asked the Attorney-General whether he has now considered further the Matrimonial Causes Rules, 1947, in the light of the second and final reports of the Denning Committee; and whether it is proposed to amend or amplify the Rules so as to give full effect to the recommendations made in those reports.

The Attorney-General: Consideration is being given, and arrangements are still being worked out, with regard to a number of the reforms advocated by the Denning Committee which were not included in the recent rules, and I cannot say when any particular reform is likely to be adopted and given effect to by rule. I understand that although further amendments of the rules are likely to be considered by the Rules Committee within a few weeks, it is improbable that the whole of the remaining recommendations made in the second and third interim reports of the committee would be brought into operation at one moment of time, and certainly not until further experience has been gained of the practical working of the recent rules. As I have said on a previous occasion, there has been no decision finally to reject any of the proposals made by the committee. [19th June.

Aliens (Naturalisation)

Mr. L. Hutchinson asked the Secretary of State for the Home Department if he will give the number of applications by aliens now resident in this country for naturalisation; the number of such aliens who have made claim for prior consideration on the grounds of war service; and the number of the latter applications that has already been granted and the number still pending.

Mr. Ede: The answer is as follows:—

Applications for Naturalisation

Statement of position since resumption of naturalisation on 1st January, 1946

Applications outstanding on 1st January, 1946 ..	16,000
Applications received from 1st January, 1946, to 31st May, 1947—	
Civilian cases	15,048
Service cases	8,172
Total ..	39,220
Certificates granted from 1st January, 1946, to 31st May, 1947—	
Civilian cases	9,323
Service cases	3,653
Total ..	12,976
Balance outstanding on 1st January, 1947—	
Civilian cases	20,443
Service cases	3,849
Total ..	24,292

[19th June.

Aliens (Naturalisation)

Captain J. Crowder asked the Secretary of State for the Home Department how many naturalisation certificates have been revoked since the war.

Mr. Ede: Three certificates of naturalisation have been revoked since the cessation of hostilities.

Captain J. Crowder asked the Secretary of State for the Home Department what record is kept of naturalised persons, convicted of fraud and other serious offences.

Mr. Ede: No special record is kept, but the police have been asked to report to me any serious offences committed by naturalised persons which might render their naturalisation liable to revocation under s. 7 of the British Nationality and Status of Aliens Act, 1914. [20th June.

NOTES AND NEWS

Honours and Appointments

The King has appointed Mr. Patrick Arthur Devlin, K.C., to be His Majesty's Attorney-General of the Duchy of Cornwall, in succession to Sir Walter Monckton, K.C.

The King has approved recommendations of the Home Secretary that Mr. Stephen Gerald Howard be appointed Recorder of Ipswich and Mr. Ralph Cleworth Recorder of Berwick-on-Tweed.

The Lord Chancellor has appointed Mr. George Stansfeld Charlesworth to be Assistant Registrar of County Courts as from the 16th June, 1947. Mr. Charlesworth will be stationed at Leeds County Court.

The following appointments are announced in the Colonial Legal Service: Mr. F. W. Johnston, Judge of the Supreme Court, Gambia, to be Puisne Judge, Nigeria; Mr. D. H. Shackles, Registrar of the High Court, Uganda, to be Registrar, Supreme Court, Gold Coast; Mr. M. Messer-Bennetts, to be Lands Officer, Gambia; Mr. A. F. Holland, to be Crown Counsel, Kenya; Mr. R. M. M. King, to be Legal Officer, British Somaliland; Mr. J. A. O'Loughlin, to be Assistant Lands Officer, Tanganyika Territory; Mr. L. Rayner, to be Crown Counsel, Malaya; Mr. P. R. Springall, to be Magistrate, Hong Kong; and Mr. R. W. Turner, to be Assistant Commissioner of Lands, Gold Coast.

Senator T. C. Kingsmill-Moore, S.C., has been appointed a Judge of the Eire High Court. He was called to the Irish Bar in 1918, took silk in 1935, and was elected a Bencher of the King's Inns in 1941. He served with the British forces as a Second Lieutenant in the Royal Flying Corps from 1917 to 1918.

Mr. GEORGE HOOPER, Assistant Solicitor to the Tonbridge Urban District Council, has been appointed Deputy Town Clerk of Ashton-under-Lyne.

Notes

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 25th July, 1947, at 10 a.m.

Double taxation agreements have been concluded between the United Kingdom and British Guiana, Cyprus, Mauritius, Northern Rhodesia, Seychelles and Trinidad. The arrangements follow the general pattern of those already made with the Dominions.

At the first meeting of the General Council of the Bar after the election, the following were appointed officers for the year: Chairman, Mr. G. O. Slade, K.C.; Vice-Chairman, Sir Cyril Radcliffe, K.C.; Hon. Treasurer, Mr. G. R. Upjohn, K.C.; additional members of the Council under reg. 8: Mr. L. F. Heald, K.C., Mr. M. P. FitzGerald, K.C., and Mr. T. N. Donovan, K.C., M.P.

THE SOLICITORS' CLERKS' PENSION FUND

Colonel W. Mackenzie Smith, D.S.O., presided at the annual meeting of the fund, which was held on Thursday, 12th June, 1947, in the Court Room of The Law Society. The Chairman moved the adoption of the report of the committee of management on the work of the fund during the year 1946, and of the accounts. He referred to his own position and the necessity for his retirement from the committee, and then, in referring to the growing membership, he mentioned the committee's desire to introduce a method of contributions on a percentage of salary. This was a well-known method in voluntary pension funds and it was thought it would be welcomed in the profession. The admission to membership of women clerks had made a satisfactory beginning. The income during 1946 had reached a figure of £50,000. Pensions were being paid to sixteen members. As to the committee, the report stated that Mr. Dingwall L. Bateson was not continuing as a member, and that the Council of The Law Society had already appointed Mr. G. Corbyn Barrow, Birmingham, and Mr. W. Lacy Addison, London, to fill vacancies. The meeting adopted the report and accounts.

Mr. A. G. B. Chittenden, Ashford, was re-elected a clerks' committeeman. On the motion of Mr. I. D. Yeaman, Cheltenham, the meeting adopted a resolution that the thanks of the meeting be expressed to Colonel W. Mackenzie Smith for his many services to the fund, for he had been a member of the committee of management since the commencement in 1930. It was the earnest hope of all present that as the President-elect of The Law Society, he would have a happy and successful year in that office.

The new Chairman of the committee of management is Mr. David Linton Pollock. The address of the fund is Maxwell House, Arundel Street, London, W.C.2. Telephone, Temple Bar 8879.

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

TRINITY SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., June 30	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues. July 1	Jones	Blaker	Andrews
Wed., ,, 2	Reader	Andrews	Jones
Thurs., ,, 3	Hay	Jones	Reader
Fri., ,, 4	Farr	Reader	Hay
Sat., ,, 5	Blaker	Hay	Farr

	Group A		Group B	
Date	Mr. Justice Roxburgh *Witness*	Mr. Justice Wynn Parry *Non-Witness*	Mr. Justice Romer *Witness*	Mr. Justice Jenkins *Non-Witness*
Mon., June 30	Mr. Reader	Mr. Hay	Mr. Andrews	Mr. Jones
Tues., July 1	Hay	Farr	Jones	Reader
Wed., ,, 2	Farr	Blaker	Reader	Hay
Thurs., ,, 3	Blaker	Andrews	Hay	Farr
Fri., ,, 4	Andrews	Jones	Farr	Blaker
Sat., ,, 5	Jones	Reader	Blaker	Andrews

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price June 23 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after ..	FA	114½	3 9 10	2 4 2
Consols 2½%	JAJO	93xd	2 13 9	—
War Loan 3% 1955–59	AO	106½	2 16 4	2 1 11
War Loan 3½% 1952 or after ..	JD	105⅛	3 6 4	2 8 1
Funding 4% Loan 1960–90	MN	118	3 7 10	2 7 6
Funding 3% Loan 1959–69 ..	AO	106½	2 16 4	2 7 4
Funding 2¾% Loan 1952–57 ..	JD	103⅛	2 13 2	2 0 0
Funding 2½% Loan 1956–61 ..	AO	103	2 8 7	2 2 4
Victory 4% Loan Av. life 18 years ..	MS	120⅛	3 6 5	2 11 2
Conversion 3½% Loan 1961 or after	AO	112	3 2 6	2 9 7
National Defence Loan 3% 1954–58	JJ	105xd	2 17 2	2 2 0
National War Bonds 2½% 1952–54 ..	MS	103	2 8 7	1 17 11
Savings Bonds 3% 1955–65 ..	FA	106½	2 16 4	2 0 9
Savings Bonds 3% 1960–70 ..	MS	106⅛	2 16 4	2 8 2
Treasury 3%, 1966 or after ..	AO	105½	2 16 10	2 12 6
Treasury 2½%, 1975 or after ..	AO	93⅛	2 13 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101½xd	2 19 1	—
Guaranteed 2¾% Stock (Irish Land Act, 1903)	JJ	101½xd	2 14 2	—
Redemption 3% 1986–96	AO	111	2 14 1	2 10 10
Sudan 4½% 1939–73 Av. life 16 years	FA	121	3 14 5	2 16 11
Sudan 4% 1974 Red. in part after 1950	MN	115⅛	3 9 3	—
Tanganyika 4% Guaranteed 1951–71	FA	106½	3 15 1	2 0 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101⅛	2 9 3	—
Colonial Securities				
•Australia (Commonw'h) 4% 1955–70	JJ	110	3 12 9	2 10 2
Australia (Commonw'h) 3½% 1964–74	JJ	108	3 0 2	2 13 2
•Australia (Commonw'h) 3% 1955–58	AO	105	2 17 2	2 6 2
†Nigeria 4% 1963	AO	120	3 6 8	2 9 6
•Queensland 3½% 1950–70	JJ	103	3 8 0	—
Southern Rhodesia 3½% 1961–66 ..	JJ	111½xd	3 2 9	2 10 4
Trinidad 3% 1965–70	AO	108⅛	2 15 4	2 7 8
Corporation Stocks				
•Birmingham 3% 1947 or after ..	JJ	100½xd	2 19 8	—
•Leeds 3½% 1958–62	JJ	106xd	3 1 3	2 11 3
•Liverpool 3% 1954–64	MN	105	2 17 2	2 4 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	120	2 18 4	—
London County 3% Con. Stock after 1920 at option of Corporation ..	MSJD	101⅛	2 19 1	—
•London County 3½% 1954–59 ..	FA	110	3 3 8	1 19 8
•Manchester 3% 1941 or after ..	FA	101	2 19 5	—
•Manchester 3% 1958–63 ..	AO	105	2 17 2	2 8 0
Met. Water Board "A" 1963–2003	AO	103⅛	2 18 0	2 14 7
• Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
• Do. do. 3% "E" 1953–73..	JJ	103xd	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66 ..	MS	106	2 16 7	2 9 10
•Newcastle 3% Consolidated 1957 ..	MS	105	2 17 2	2 8 0
Nottingham 3% Irredeemable ..	MN	107	2 16 1	—
Sheffield Corporation 3½% 1968 ..	JJ	115xd	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture ..	JJ	121xd	3 6 1	—
Gt. Western Rly. 4½% Debenture ..	JJ	122½xd	3 13 6	—
Gt. Western Rly. 5% Debenture ..	JJ	133½xd	3 14 11	—
Gt. Western Rly. 5% Rent Charge..	FA	130½xd	3 16 8	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	129	3 17 6	—
Gt. Western Rly. 5% Preference ..	MA	118½	4 4 5	—

• Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).